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March 27, 2018

**VIA HAND DELIVERY**

Jocelyn Boyd
 Chief Clerk
 South Carolina Public Service Commission
 PO Drawer 11649
 Columbia, SC 29211

Re: Joint Petition to Transfer a Certificate of Environmental Compatibility and
 Public Convenience and Necessity from Columbia Energy LLC to South
 Carolina Electric & Gas Company
Docket No. 2018-25-E

Dear Ms. Boyd:

Pursuant to Commission Order No. 2018-209, and pursuant to the provisions of S.C. Code Ann. § 58-5-10 *et seq.*, Columbia Energy, LLC and South Carolina Electric & Gas Company ("SCE&G") hereby jointly file with the Public Service Commission of South Carolina ("Commission") and seek approval of the Energy Services Agreement ("ESA") currently between Columbia Energy and DAK AMERICAS, LLC ("DAK AMERICAS"); by way of the purchase of the facility described below, the ESA will be assigned from Columbia Energy to SCE&G.

BACKGROUND

As the Commission is aware, Columbia Energy currently operates an approximately 540 megawatt rated combined cycle gas-fired generation facility and equipment located near Gaston, South Carolina (the "Facility"). Columbia Energy obtained a Certificate of Environmental Compatibility and Public Convenience and Necessary for the construction and operation of the Facility from the Commission on February 6, 2001 via Order No. 2001-108 in Docket No. 2000-487-E.

In addition, Commission Order No. 2001-108 granted a Certificate of Public Convenience and Necessity for the ESA between Columbia Energy and Eastman Chemical Company. Carolina Operations ("Carolina Eastman"). Pursuant to the ESA, Columbia Energy sells "thermal energy from the Facility to Carolina Eastman for use in its manufacturing operations." Order No. 2001-108, Findings of Fact, ¶7. As concluded by the Commission in Order No. 2001-108 (Conclusions of Law at ¶ 8):

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The contractual relationship between the parties under the ESA represents the product of extensive negotiation of terms and conditions by two sophisticated business entities, both of which were assisted by legal counsel throughout the negotiations. In addition to the agreed pricing provisions for the sale of thermal energy (including negotiated price escalation mechanisms), the ESA provides for dispute resolution, remedies for breach, and audit rights, all of which are designed to protect each party's interests in the contractual relationship.

THE TRANSACTIONS IN THIS DOCKET

SCE&G has entered into an Asset Purchase Agreement with Columbia Energy through which Columbia Energy has agreed to sell, and SCE&G has agreed to purchase, the assets and properties comprising the Facility (the "Transaction"). As a condition of closing the Transaction, the ESA will be assigned to SCE&G.

While the ESA has been amended several times since the issuance of Commission Order No. 2001-108, the document continues to represent "the product of extensive negotiation of terms and conditions by two sophisticated business entities" Moreover, the ESA contains those provisions referenced in Commission Order No. 2001-108, "all of which are designed to protect each party's interests in the contractual relationship." Following the closing of the Transaction, SCE&G will assume the rights and obligations previously held and owed by Columbia Energy.

FILING OF THE ESA AND REQUEST FOR PROTECTIVE ORDER

Due to the commercial sensitivity and proprietary nature of certain provisions of the ESA as well as the highly competitive nature of the industry in which DAK AMERICAS operates, the parties (Columbia Energy, DAK AMERICAS, and SCE&G as putative assignee) have agreed to keep the terms of the ESA confidential. In accordance with the terms of the ESA, Columbia Energy, and SCE&G respectfully request that the Commission find that the ESA contains protected information and issue a protective order barring the disclosure of the ESA under the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, 10 S.C. Code Ann. Regs. 103-804(S)(1), or any other provision of law. Pursuant to 10 S.C. Code Ann. Regs. 103-804(S)(2), the determination of whether a document may be exempt from disclosure is within the Commission's discretion.

To this end, and in accordance with S.C. Code Ann. § 58-4-55(C) and Commission Order No. 2005-226 dated May 6, 2005, we enclose with this letter a redacted version of the ESA that protects from disclosure the sensitive, proprietary, and commercially valuable information, while making available for public viewing non-protected information. We also enclose a copy of the unredacted ESA in a separate,

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sealed envelope and respectfully request that, in the event that anyone should seek disclosure of this unredacted ESA, the Commission notify Columbia Energy and SCE&G of such request and provide it with an opportunity to obtain an order from the Commission or a court of competent jurisdiction protecting the ESA from disclosure.

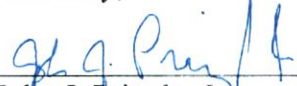
Enclosed are the following:

- (1) A true and correct copy of the ESA in a sealed envelope marked "CONFIDENTIAL." Each page of the ESA is also marked "CONFIDENTIAL."
- (2) One (1) copy of a redacted copy of the ESA for filing and public disclosure.

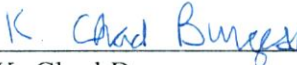
By copy of this letter, we are providing the South Carolina Office of Regulatory Staff ("ORS") with a redacted copy of the ESA for its records. The ORS has already conducted a review of the unredacted ESA.

Thank you for your assistance and consideration of this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



John J. Pringle, Jr.
Counsel for Columbia Energy, LLC

 w/ permission

K. Chad Burgess
Counsel for SCE&G

Cc: Jeff Nelson, Esquire

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ENERGY SERVICES AGREEMENT

BETWEEN

COLUMBIA ENERGY LLC

AND

EASTMAN CHEMICAL COMPANY

DATED AS OF AUGUST 15, 2000

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THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT
TO THE FEDERAL ARBITRATION ACT AND/OR §15-48-10
OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS
AMENDED AND/OR FEDERAL LAWS

ENERGY SERVICES AGREEMENT

THIS ENERGY SERVICES AGREEMENT is made and entered into as of this 15th day of August, 2000, by and between Eastman Chemical Company ("Eastman"), a corporation organized and existing under the Laws of the State of Delaware, and Columbia Energy LLC ("Seller"), a limited liability company organized and existing under the Laws of the State of Delaware.

WITNESSETH

WHEREAS, Seller proposes to design, develop, construct, own, operate, and maintain the Project on land leased from Eastman pursuant to the Lease Agreement for the purposes of producing Steam for sale to Eastman and electric power for sale to Eastman and to others; and

WHEREAS, Eastman owns and operates the Plant, which utilizes electric power and steam in substantial quantities for manufacturing purposes; and

WHEREAS, Eastman desires to purchase electric power and Steam produced by the Project from Seller, and Seller desires to sell such electric power and Steam to Eastman; and

WHEREAS, the Parties desire to set forth in writing their respective rights and obligations with respect to the purchase and sale of electric power and Steam;

NOW, THEREFORE, in consideration of the mutual obligations and undertakings herein contained, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.01 Defined Terms.

"Abandonment" or "Abandon" shall mean the voluntary relinquishment of all possession and control of the Project or complete cessation of work on the Project for sixty (60) consecutive days, by Seller or Seller's Associated Parties, but only if such relinquishment or cessation (i) is in violation of Prudent Operating Practice, and (ii) is not caused by or attributable to an Event of Default as defined in Section 1.01 or an event of Force Majeure.

"Adverse Regulatory Event" shall mean (i) Seller or any of Seller's Affiliates becomes, could reasonably be expected to become, or receives an indication from a Governmental Authority that one of them is likely to become, subject to regulation as a public utility by any Governmental Authority by virtue of Seller's ownership of the Project, Seller's sale of electric power to Eastman or Seller's performance of any other obligation under this Agreement; (ii) Seller is, or could reasonably be expected to be, required to pay stranded costs, exit fees, or similar charges (either directly or in reimbursement of any such charge imposed on Eastman) as a result of Seller's sale of electric power to Eastman or Seller's performance of any other obligation under this Agreement; or (iii) Seller's ownership of the Project, Seller's sale of electric power to Eastman, or Seller's performance of any other obligation under this Agreement violates, or could reasonably be expected to violate, any Law, *provided* that such violation cannot be avoided or cured through the exercise of reasonable diligence.

"Adverse Regulatory Event (NG)" shall mean (i) Seller or any of Seller's Affiliates becomes, could reasonably be expected to become, or receives an indication from a Governmental Authority that one of them is likely to become, subject to regulation as a public utility by any Governmental Authority by virtue of Seller's delivery of natural gas into the HTM Heater Pipeline for consumption in the HTM Heater System; or (ii) Seller's delivery of natural gas into the HTM Heater Pipeline for consumption in the HTM Heater System violates, or could reasonably be expected to violate, any Law, *provided* that such violation cannot be avoided or cured through the exercise of reasonable diligence.

"Affiliate" shall mean any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a Party.

"Agreement" shall mean this Energy Services Agreement, including all exhibits hereto, as amended, supplemented, and modified from time to time.

"Arbitration Rules" shall mean the commercial arbitration rules of the American Arbitration Association.

"Associate" shall mean, with respect to any Person, (i) any Affiliate of such Person, (ii) any corporate or business entity in which such Person has a substantial beneficial interest or as to which such Person serves as a trustee or in a similar fiduciary capacity, (iii) any relative or spouse of such Person or any relative of such spouse, (iv) any relative or spouse of any director or officer of such Person, (v) any current or former employee, agent, advisor, consultant, officer, director, partner or stockholder of such Person, and (vi) any Person in which such Person has an equity interest or with which such Person has a business relationship.

"Associated Party" shall mean, with respect to any Party, any Affiliate of such Party, any officer, director, trustee, fiduciary, employee, agent, representative, contractor, or subcontractor of such Party, in each case acting within the scope of their authority and, in the case of employees, in the course of their employment.

"Authorization" shall mean any license, permit, approval, clearance, entitlement, allowance, franchise, or other authorization, whether corporate, governmental or otherwise.

"Bankruptcy Law" shall mean any Law relating to bankruptcy, insolvency, reorganization, winding-up, or composition, or adjustment of debts.

"Basic Steam Demand" shall mean three hundred thousand (300,000) pph of High Pressure Steam and one hundred and twenty thousand (120,000) pph of Intermediate Pressure Steam.

"Bid Package" shall have the meaning specified in Section 6.02(a)(i).

"Btu" shall mean British Thermal Unit, which is that quantity of heat required to raise the temperature of one (1) pound of water by one degree Fahrenheit (1°F) at atmospheric pressure.

"Change of Control" shall mean a transfer of an interest in Seller, or a transfer of an interest in any direct or indirect owner of Seller if the fair market value of the Project represents all or substantially all of the fair market value of the assets of such direct or indirect owner.

"Claim" shall have the meaning specified in Section 9.02.

"Cogen Site" shall mean the tract of land on which Seller's cogeneration facility will be or is located, as more particularly described in Exhibit A to the Lease Agreement.

"Collateral Assignee" shall have the meaning specified in Section 7.02.

"Committed Capacity" shall mean seventy (70) megawatts.

"Construction Contractor" shall have the meaning specified in Section 6.01(b)(ii).

"Contract Capacity" shall mean the amount of electric capacity nominated by Eastman pursuant to Section 4.02(b).

"Contract Year" shall mean each successive twelve (12) month period commencing on the anniversary of the first (1st) day of the month following the month in which the Initial Delivery Date occurs; *provided, however*, that the first Contract Year shall include the period between the Initial Delivery Date and the first (1st) day of the next succeeding month.

"CT" shall mean any one (1) of the Project's combustion turbines.

"Daily Condensate Shortfall" shall mean the amount of Steam, on a mass basis, delivered to Eastman on that day, plus HRSG blowdown, *reduced* by the amount of condensate, on a mass basis, returned by Eastman to Seller on that day.

"Debt Service" shall mean the sum of any payments to the Project's Lenders, including payments of principal and interest, any amounts deposited into reserves which Seller is required to maintain, and any other fees or indemnities payable to the Project's Lenders.

"Default" shall mean a breach of an obligation under this Agreement which, with notice or lapse of time, or both, would be an Event of Default.

"Demand Schedule" shall mean the monthly and annual schedules prepared by Eastman pursuant to Section 5.04(e).

"Dispute" shall have the meaning specified in Section 10.06(a).

"Due Date" shall have the meaning specified in Section 4.05(a).

"Easements" shall have the meaning specified in the Lease Agreement.

"Easement Areas" shall mean the portions of the Plant Site covered by the Easements.

"Eastman Adverse Act" shall mean (i) the negligence or willful misconduct of Eastman or (ii) a Default or an Event of Default with respect to Eastman under (and as defined in) a Project Agreement that is not an event arising out of (x) a Seller Adverse Act, (y) Force Majeure, or (z) any other accidental occurrence or unexpected event that does not constitute negligence or willful misconduct.

"Eastman HSE Representative" shall mean the Manager, Carolina Operations Health, Safety and Environment, or the designee of such Person as contemplated by Eastman's Standards.

"Eastman Improvements" means all buildings, structures, improvements, fixtures, equipment, fencing, paving, berms, grading, utility infrastructure and other facilities now or hereafter situated on any part of the Plant Site other than the Cogen Site, owned by Eastman or any Tenant of Eastman, including EKS13, *but excluding* the Facility and any other Project facilities owned by Seller.

"Eastman Suspension Period" shall mean any period during which Eastman has suspended its purchase obligations pursuant to Section 3.04.

"Eastman Work Budget" shall have the meaning specified in Section 6.01(b)(iii).

"Eastman Work Costs" shall have the meaning specified in Section 6.01(b)(iii).

"Eastman's Electric Requirements" shall mean the amount of electric power required for Eastman's operations at the Plant. Eastman's Electric Requirements shall not include *de minimis* amounts of energy purchased from Utility for peripheral Plant facilities such as security lighting.

"Eastman's Existing Steam Equipment" shall mean Eastman's existing coal-fired boilers (designated by Eastman as Boilers Nos. 3, 4, and 5), Eastman's existing natural gas fired boiler (designated by Eastman as Boiler No. 1), and any equipment that replaces, modifies, or upgrades such equipment; *excluding* any equipment installed by Seller.

"Eastman's Infrastructure" shall mean Eastman's utility infrastructure facilities, including water treatment, water supply and wastewater disposal equipment; electrical equipment; and other equipment Seller reasonably considers necessary or expedient for the continued operations of the Project during any Eastman Suspension Period.

"Eastman's Standards" shall mean the policies, procedures, and rules adopted by Eastman as of the date of this Agreement relating to health, safety, environmental, and operational issues applicable to the use and occupancy of any portion of the Plant Site (*excluding* the Project Site) that have been provided to Seller, and an index of which is attached as Exhibit 1.01(b). In the event that any such policies, procedures, or rules are adopted or modified by Eastman at any future time, such newly adopted or modified policies, procedures, or rules that do not have the effect of increasing Seller's obligations or liabilities under the Project Agreements, or otherwise adversely affecting Seller, shall become part of Eastman's Standards thirty (30) days after Seller receives from Eastman a written copy thereof conspicuously identified as a newly adopted or modified Eastman's Standards or such longer time as Seller requires to implement the newly adopted or modified Eastman's Standards.

"Eastman's Steam Requirements" shall mean the amount of High Pressure Steam and Intermediate Pressure Steam required for Eastman's operations at the Plant. Eastman's Steam Requirements shall exclude *de minimis* amounts of steam produced by internal heat recovery processes.

"Economic Dispatch" shall mean any period of reduced or curtailed operation of the Project (i) due to market conditions that cause the variable operating costs of electric output of the Project, including fuel, operation and maintenance expenses, taxes, and other variable expenses, to exceed the amount that can be realized from the sale of electric output from the Project, or (ii) at the direction of any independent system operator, regional transmission operator, or other entity with authority over the operation of electric generating equipment in the geographical region in which the Project is located.

"Effective Date" shall mean the date of execution of this Agreement by the Parties.

"EKS13" shall mean the portion of the Plant Site other than the Project Site.

"Electric Credit" shall mean the amount determined pursuant to Section III or IV of Exhibit 4.03(b), as applicable.

"Electric Payment" shall mean the payment for electric services, as determined in accordance with Section 4.03(b).

"Electric Supply Period" shall be any period during which Seller is providing, or is required to provide, electric power to Eastman in accordance with Section 4.02.

"Electric Substation Area" has the meaning given in the Lease Agreement.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution and Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 1101 et seq.), and any present or future analogous Laws.

"Essential Gas Facilities" shall mean any portion of the gas pipeline, valves, meters, and other equipment that is necessary to the continued supply of natural gas to the Project.

"Essential ISBL Facilities" shall mean the portion of the HTM Heater Pipeline, together with all ancillary equipment and utility interconnections, necessary to deliver natural gas to the HTM Heater System, and located inside the boundaries of the Cogen Site.

"Event of Default" shall have the meaning specified in Sections 10.01 and 10.02.

"Excess Electric Capacity" shall mean capacity in excess of the Contract Capacity.

"Excess Electric Energy" shall mean the energy associated with Excess Electric Capacity.

"Excess Steam" shall mean Steam in excess of the Maximum Steam Demand that Seller may provide pursuant to Section 4.01(g).

"Exempt Wholesale Generator" shall mean an exempt wholesale generator within the meaning of Section 32 of FUECA, 15 U.S.C. Section 79z-5a, and the implementing regulations issued by the Federal Energy Regulatory Commission, 18 C.F.R. Part 365.

"Fair Market Value" shall have the meaning specified in Section 6.07(e)(ii).

"Financial Closing" shall mean the earlier of (i) the execution of loan agreements with the Financing Party or Parties providing for the construction or term financing of the Project, and the fulfillment or waiver of all conditions precedent to the initial availability of funds thereunder; (ii) in the event that the Project will be financed by an Affiliate of Seller, the date when such Affiliate delivers evidence to Eastman demonstrating that it has reserved adequate funds and has cash available to provide for the construction financing of the Project; or (iii) at Seller's option, the delivery of a notice to proceed to the Construction Contractor, or the commencement of construction of the Project.

"Financing Party" shall mean any Person providing debt or equity financing (including equity contributions or commitments), refinancing of any such financing, or any guarantee, insurance or credit support for or in connection with such financing or refinancing, in connection with the construction, ownership, operation, or maintenance of the Project, or any part thereof, *provided, however*, that a Financing Party shall not include Seller or, in the case of a person providing equity, any Affiliate of Seller.

"Force Majeure" shall mean an event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include failure or interruption of the production, delivery, or acceptance of electric power, natural gas, Steam, condensate, water, fire water, or wastewater due to an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerrilla action; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition; hurricane; flood; lightning; wind; drought; peril of the sea; the binding order of any Governmental Authority (*provided* that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (*provided* that such action is ordinarily performed by the Governmental Authority and has been timely requested and diligently pursued); unavailability of fuel (including interruption of fuel transportation); unavailability of supplies or products necessary for the operation of the Plant or the Project; failure of equipment not utilized by or under the control of a Party; and failure of equipment utilized by and under the control of a Party, *provided* that such equipment has been designed, constructed, operated, and maintained in accordance with Prudent Operating Practice. Notwithstanding the foregoing, nothing related to market conditions shall constitute Force Majeure.

"Gas Demand Notice" shall have the meaning given in Section 5.12(a)(iii).

"Gas Meter Station" shall mean Seller's gas meter station located on the Cogen Site, as described in Exhibit 1.01(a).

"Governmental Authority" shall mean the federal government of the United States, and any state, county, municipal or local government or regulatory department, body, political subdivision, commission, agency, instrumentality, ministry, court, judicial or administrative body, taxing authority, or other authority thereof having jurisdiction over either Party, the Project (including its fuel supply and transportation), the Project Site, or the Plant, whether acting under actual or assumed authority.

"gpd" shall mean gallons per day and "gpm" shall mean gallons per minute.

"Hazardous Substance" means any hazardous substance, toxic substance, toxic chemical, pollutant, air contaminant, thermal discharge, solid waste, or hazardous solid waste regulated under any Environmental Law.

"High Pressure Steam" shall have the meaning given in Exhibit 5.01 (b).

"HRSG" shall mean any of the Project's heat recovery Steam generators.

"HTM Financed Facilities" shall mean the HTM Heater System Upgrades and the portion of the HTM Heater Pipeline outside the boundaries of the Project Site.

"HTM Heater Charge" shall have the meaning specified in Exhibit 4.03(a).

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"HTM Heater Pipeline" shall mean the new gas pipeline for the transportation of natural gas from the Gas Meter Station to the HTM Heater System, located partially inside and partially outside the boundaries of the Cogen Site, *but excluding* any Essential Gas Facilities.

"HTM Heater System" shall mean, collectively, Eastman's HTM heaters and control system, as upgraded by the HTM Heater System Upgrades, *but excluding* existing import and export pipes and lines and the HTM Heater Pipeline.

"HTM Heater System Upgrades" shall have the meaning specified in Section 6.02(b).

"Imposed PB Completion Date" shall have the meaning specified in Section 3.06.

"Incremental Steam Demand" shall mean Steam in excess of the Basic Steam Demand that Eastman has elected to purchase under Section 4.01(h).

"Indemnifiable Cost" shall mean any cost, expense, damage, liability, or loss, including reasonable attorneys' fees.

"Indemnified Party" shall have the meaning specified in Section 9.02(e).

"Indemnifying Party" shall have the meaning specified in Section 9.02(e).

"Independent Party" shall have the meaning specified in Section 5.06(c).

"Infrastructure Utilization Period" shall mean the period during which Seller is utilizing Eastman's Infrastructure pursuant to Section 3.04.

"Initial Delivery Date" shall mean the first date on which each of the ISBL Steam Interconnection Facilities are connected to the OSBL Steam Interconnection Facilities; the ISBL Auxiliary Interconnection Facilities are connected to the OSBL Auxiliary Interconnection Facilities; the HTM Heater Pipeline, including the Essential ISBL Facilities, has been connected to the Gas Meter Station and the HTM Heater System; and the Project is capable of commencing the regular delivery of Steam and natural gas in accordance with the terms of this Agreement.

"Initial Electric Delivery Date" shall mean the first date on which the ISBL Electric Interconnection Facilities are connected to Eastman's electric power distribution system, Seller's sale of electric power to Eastman would not result in an Adverse Regulatory Event or an event that would permit Seller to suspend the supply of electric power to Eastman pursuant to Section 4.02(h), and the Project is capable of commencing the regular delivery of electric power directly to Eastman in accordance with the terms of this Agreement.

"Intermediate Pressure Steam" shall have the meaning given in Exhibit 5.01.

"ISBL" shall mean inside the boundaries of the Project Site.

"ISBL Auxiliary Interconnection Facilities" shall mean all equipment and facilities on Seller's side of the Point(s) of Delivery for the transfer of fire water, condensate, demineralized make-up water, raw water, waste water effluent, and other commodities to the OSBL Auxiliary Interconnection Facilities, as described in Exhibit 1.01(a).

"ISBL Electric Interconnection Facilities" shall mean all equipment and facilities on Seller's side of the Point(s) of Delivery for the purpose of interconnecting the electric generating equipment at the Project to Eastman's electric power distribution system, as described in Exhibit 1.01(a).

"ISBL Interconnection Facilities" shall mean the ISBL Auxiliary Interconnection Facilities, the ISBL Electric Interconnection Facilities, and the ISBL Steam Interconnection Facilities.

"ISBL Steam Interconnection Facilities" shall mean all equipment and facilities (including utility interconnections) on Seller's side of the Point(s) of Delivery for the purpose of interconnecting the Steam production equipment at the Project to the OSBL Steam Interconnection Facilities, as described in Exhibit 1.01(a).

"Kgals" shall mean one thousand (1,000) gallons.

"kWh" shall mean one (1) kilowatt-hour of electric energy.

"Late Payment Rate" shall mean the Prime Rate per annum, plus two percent (2%).

"Law" shall mean (i) any law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, holding of a judicial or administrative tribunal, or other similar legal requirement, or (ii) any legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority.

"Lease Agreement" shall mean the Ground Lease Agreement, of even date herewith, pursuant to which Eastman shall (i) lease, rent, let, and demise the Cogen Site to Seller; (ii) grant to Seller certain easements, and (iii) grant to Seller a license and right to have certain appurtenant facilities located in the Plant Site.

"Lender" shall mean (i) with respect to Seller, any Financing Party providing debt financing, refinancing of any such financing, or any guarantee, credit insurance or credit support for or in connection with such financing or refinancing, in connection with the acquisition, construction, ownership, operation, or maintenance of the Project, or any part thereof, or in connection with the acquisition, construction, or ownership of the HTM Financed Facilities and the OSBL Interconnection Facilities, or any part thereof, or (ii) with respect to Eastman, any lending institution party to the senior credit facility of Eastman or the Plant.

"Maintenance Outage" shall mean any period when Seller, despite performance of its obligations under Section 5.02(a), is unable to deliver Steam or electric power due to maintenance of the Project or any part thereof.

"Maximum Steam Capacity" shall mean six hundred thousand (600,000) pph of Steam, consisting of four hundred thousand (400,000) pph of High Pressure Steam and two hundred thousand (200,000) pph of Intermediate Pressure Steam.

"Maximum Steam Demand" shall mean the sum of the Basic Steam Demand and the Incremental Steam Demand.

"Minimum Steam Purchase" shall mean an amount of net thermal energy equal to nine thousand (9,000) MMBtu per day, reduced in proportion to any reduction in Eastman's Steam Requirements due to an event of Force Majeure.

"Minimum Steam Quantity" shall mean the amount of Steam (approximately 80,000 pph) that Eastman must use for a purpose described in 18 C.F.R. § 292.202(h), including any amendments thereto, in order for the Project to be a Qualifying Facility.

"MMBtu" shall mean one million (1,000,000) Btus.

"MW" shall mean one (1) megawatt.

"Net Thermal Energy" shall have the meaning specified in Exhibit 4.03(a).

"Offeror" shall have the meaning specified in Section 4.02(c).

"Offer Notice" shall have the meaning specified in Section 4.02(c).

"Operating Committee" shall mean the committee established pursuant to Section 5.11.

"Operating Expenses" shall mean the costs of operating and maintaining the Project. Operating Expenses shall include payments for natural gas or natural gas transportation services, including distributions in lieu of payments, operation and maintenance services, insurance and administrative services, regardless of whether such payments or distributions are subordinated to debt service or not, *but excluding* the profit portion of any subordinated fees to Seller or Seller's Affiliates.

"OSBL" shall mean outside the boundaries of the Project Site.

"OSBL Auxiliary Interconnection Facilities" shall mean all equipment and facilities on Eastman's side of the Point(s) of Delivery for the transfer of fire water, condensate, demineralized make-up water, raw water, waste water effluent, and other commodities to the Plant commodities systems, as described in Exhibit 1.01(a).

"OSBL HTM Heater Facilities" shall mean the HTM Heater System and the portion of the HTM Heater Pipeline outside the boundaries of the Project Site.

("OSBL Interconnection Facilities" shall mean the OSBL Auxiliary Interconnection Facilities and the OSBL Steam Interconnection Facilities.

"OSBL Steam Interconnection Facilities" shall mean all equipment and facilities on Eastman's side of the Point(s) of Delivery for the purpose of interconnecting the Steam production equipment at the Project to the Plant Steam distribution system, as described in Exhibit 1.01(a).

"OSBL Work" shall have the meaning specified in Section 6.02(a).

"Package Boilers" shall mean the Project's two (2) back-up boilers; each rated to provide two hundred and fifty thousand (250,000) pph of High Pressure Steam at the pressure and temperature specified in Exhibit 5.01(b) as measured at the connection point shown in Figure 1.01(a).

"Parties" shall mean Eastman and Seller.

"Party" shall mean Eastman or Seller.

"Party's Workers" shall have the meaning specified in Section 12.08.

"PB Utilization Period" shall have the meaning specified in Section 4.01(k)(i).

"Performance Test" shall mean those tests performed to demonstrate compliance with the Project's construction contract(s), as more fully set forth in Exhibit 1.01(c).

"Person" shall mean any legal or natural person, including any individual, corporation, partnership, limited liability company, trust, governmental or international body or agency, or other entity.

"Pipeline Utilization Period" shall have the meaning specified in Section 5.12(a)(iii).

"Plant" shall mean EKS13 and all Eastman Improvements.

"Plant Site" means all land or other interests in real property owned by Eastman in both Calhoun County, South Carolina and Lexington County, South Carolina, in one or more contiguous tracts, including land on which any Eastman Improvements are located and land currently undeveloped for Eastman's manufacturing business on the Effective Date.

"Point(s) of Delivery" shall mean the physical location or locations where the ISBL Electric Interconnection Facilities, the ISBL Steam Interconnection Facilities, and the ISBL Auxiliary Interconnection Facilities are connected to Eastman's electric power distribution system, the OSBL Steam Interconnection Facilities, and the OSBL Auxiliary Interconnection Facilities, respectively, all as described in Exhibit 1.01(a).

("Power Purchase Agreement" shall mean any written agreement or other arrangement, other than this Agreement, between Seller and any electric utility, power marketer, independent system operator, power pool, retail customer, or other power purchaser, providing for the purchase of all or part of the electric energy or capacity produced by the Project in excess of the Contract Capacity, including any renewals or extensions of any such agreement or arrangement.

"pph" shall mean pounds per hour.

"Price for Net Thermal Energy" shall have the meaning specified in Exhibit 4.03(a).

"Price for Package Boiler Steam" shall have the meaning specified in Exhibit 4.03(a).

"Prime Rate" means, for any day, the "PRIME RATE" reported by the Wall Street Journal as the base rate on corporate loans posted by at least seventy-five percent (75%) of the nation's thirty (30) largest banks for such day, as such "PRIME RATE" may change from time to time. In the event the Wall Street Journal ceases to publish the "PRIME RATE," then Eastman and Seller shall agree as to a substitute reference which represents the base rate on corporate loans posted by major banks having one or more lending offices in New York, New York.

"Prior Contract Capacity" shall have the meaning specified in Section 4.02(b)(ii).

("Project" shall mean Seller's electric power generating and Steam production facility, including the ISBL Interconnection Facilities, the Essential ISBL Facilities and any other property on Seller's side of the Point(s) of Delivery, all as more fully described in Exhibit 1.01(a), as such Exhibit may be modified by Seller following the Initial Delivery Date to conform to the as-built drawings for the Project provided to Seller by the Construction Contractor; *provided, however*, that for purposes of this Agreement, the Project shall not include any OSBL Interconnection Facilities.

"Project Agreements" shall mean this Agreement, the Lease Agreement, and the instruments described in the Lease Agreement granting the Easements.

"Project Site" shall mean the Cogen Site and the Easement Areas.

"Projected Initial Delivery Date" shall initially mean June 1, 2003 (as such date may be modified pursuant to Section 5.10(a)), which is the date upon which Seller expects to be capable of commencing the regular delivery of Steam and natural gas in accordance with the terms hereof.

"Property Tax" shall have the meaning specified in Section 7.01(a) of the Lease Agreement.

("Proprietary Information" shall have the meaning specified in Section 12.06(f).

"Prudent Operating Practice" shall mean any of the practices, methods, standards, and acts that are used by a significant portion of the applicable industry in the construction, operation, and/or maintenance of comparable equipment or facilities and which, in the exercise of reasonable judgment in the light of the facts actually known, or reasonably should have been known, at the time that a decision was made, would reasonably have been expected to accomplish the desired result at the lowest reasonable cost, consistent with licensing and regulatory considerations, environmental considerations, reliability, safety, and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method, standard, or act, to the exclusion of all others, but rather to be an accepted range of practices, methods, standards, or acts employed by constructors, owners, operators, and maintainers of facilities similar in locale, size, and operational characteristics to the Project, including those involving the use of new concepts or technology, and having due regard for applicable safety and maintenance codes and standards, manufacturers' warranties, and applicable Laws and Authorizations.

"psig" shall mean pounds per square inch gauge.

"PUHCA" shall mean the Public Utility Holding Company Act of 1935, as amended.

"Qualifying Facility" shall mean a qualifying facility within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, 16 U.S.C. Section 824a-3, and the implementing regulations issued by the Federal Energy Regulatory Commission, 18 C.F.R. Part 292.

"Seller Adverse Act" shall mean (i) the negligence or willful misconduct of Seller or (ii) a Default or an Event of Default with respect to Seller under (and as defined in) a Project Agreement that is not an event arising out of (x) an Eastman Adverse Act, (y) Force Majeure, or (z) any other accidental occurrence or unexpected event that does not constitute negligence or willful misconduct.

"Seller's HTM Heater Interests" shall mean the (i) undivided fifty percent (50%) interest in the HTM Heater System and (ii) one hundred percent (100%) interest in the portion of the HTM Heater Pipeline outside the boundaries of the Project Site, transferred by Eastman to Seller under Section 6.08(b)(ii).

"Senior Management" shall mean the Vice President and General Manager, Carolina Operations, with respect to Eastman, and an officer of Seller, with respect to Seller.

"Steam" shall mean High Pressure Steam and Intermediate Pressure Steam.

"Steam Demand Notice" shall have the meaning given in Section 4.01(k).

"Steam Payment" shall mean the payment for Steam, as determined in accordance with Exhibit 4.03(a).

"Steam Rebate" shall have the meaning given in Exhibit 4.03(a).

"Subordination Amount" shall mean payments made by Seller relative to the Project for operation and maintenance, payment of debt, subordinated fuel payments, and other payments as set forth in Exhibit 4.03(a). The Subordination Amount shall be the sum of (i) Debt Service and (ii) the Operating Expenses of the Project.

"Supplemental Fuel Arrangement" shall mean any contract or other arrangement to acquire fuel supply and transportation to satisfy Eastman's Incremental Steam Demand.

"Tax" shall mean any tax, charge, impost, tariff, duty or fee of any kind charged, imposed or levied, directly or indirectly, by any Governmental Authority, including any income tax, value added tax, sales tax, stamp tax, import duty, withholding tax (whether on dividends, interest payments, fees, equipment rentals or otherwise), excise tax, Property Tax, special levy or assessment, business or occupation tax, environmental or energy tax, or any fee paid in lieu of any of the foregoing.

"Technical Dispute" shall have the meaning specified in Section 10.06(c).

"Technical Expert" shall have the meaning specified in Section 10.06(c).

"Tenant" shall mean a Person other than Seller that owns and operates a captive facility at the Plant Site pursuant to a lease from Eastman.

"Term" shall mean the duration of this Agreement as determined under Article III, including any extensions thereof.

"Tier One Fuel" shall have the meaning specified in Exhibit 4.03(a).

"Tier One Net Thermal Energy" shall have the meaning specified in Exhibit 4.03(a).

"Tier One Thermal Energy Price" shall have the meaning specified in Exhibit 4.03(a).

"Tier Two Fuel" shall have the meaning specified in Exhibit 4.03(a).

"Tier Two Net Thermal Energy" shall have the meaning specified in Exhibit 4.03(a).

"Tier Two Thermal Energy Price" shall have the meaning specified in Exhibit 4.03(a).

"Transferee" shall have the meaning specified in Section 12.06(a).

"Transfer Interest" shall have the meaning specified in Section 7.03.

"Transfer Offer Notice" shall have the meaning specified in Section 7.03.

"Transferor" shall have the meaning specified in Section 12.06(a).

"Unused Contract Capacity" shall have the meaning specified in Section 4.02(b)(iv).

"Utility" shall mean South Carolina Electric & Gas Company, and any successor thereto.

1.02 Rules of Interpretation.

a. General. Unless otherwise required by the context in which any term appears:

i. Capitalized terms used in this Agreement shall have the meanings specified in this Article.

ii. The singular shall include the plural and the masculine shall include the feminine and neuter.

iii. References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Agreement, and references to "Paragraphs," "Subparagraphs," or "Clauses" shall be to separate paragraphs, subparagraphs, or clauses of the section in which the reference occurs.

iv. The words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words "include," "includes" or "including" shall mean "including, but not limited to;" and the words "best efforts" shall mean a level of effort which, in the exercise of reasonable judgment in the light of facts known at the time a decision is made, can be expected to accomplish the desired result at a reasonable cost, in a timely manner, and consistent with Prudent Operating Practice.

v. The term "day" shall mean calendar day, and the term "business day" shall mean a week day on which commercial banks are commonly open in the jurisdiction in which the Project is located. The term "month" shall mean a calendar month; *provided* that where a period measured in months commences on a date other than the first (1st) day of a month, the period shall run from the date on which it starts to the corresponding date in the next month and, as appropriate, to succeeding months thereafter. The term "quarter" shall mean a calendar quarter; and the term "year" shall mean a calendar year. Where the context requires, whenever an event is to be performed by a particular date, or a period ends on a particular date, and the date in question falls on a weekend, or on a day that is not a business day, the event shall be performed, or the period shall end, on the next succeeding business day.

vi. The term "electric power" shall mean electric energy and electric capacity, "energy" shall mean the energy component of electric power, and "capacity" shall mean the capacity component of electric power.

vii. The term "negligence" shall mean negligence of a Person, as defined under South Carolina Law; and the term "willful misconduct" shall mean action taken or not taken by a Person which action is knowingly or intentionally taken or not taken: (A) with intent that injury or damage would result therefrom, or (B) with actual knowledge at the time of taking or not taking such action that such action taken or not taken is or shall be a material Default under this Agreement or the Lease Agreement, or with conscious indifference to the consequences thereof, or in knowing

violation of any Law. The Parties expressly agree that the terms negligence and willful misconduct shall not be construed to exclude action taken or not taken by an officer, director, manager, foreman, or other employee or agent of the Person, in each case acting within the scope of their authority in the course of their employment. Without limiting the foregoing definition in any way, willful misconduct does not include any act or failure to act that is involuntary, accidental, unintentional, or negligent, based on any theory of negligence.

viii. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles as in effect from time to time in the United States of America, consistently applied.

ix. All references to a particular Person shall include such Person's successor and permitted assigns.

x. All references herein to any contract or other agreement shall be to such contract or other agreement as amended, supplemented, or modified to the date of reference.

xi. All references herein to any Law shall be to such Law as amended, supplemented, modified, or replaced from time to time.

xii. Reference to Force Majeure as an excuse of non-performance in any provision shall not be interpreted to mean that Force Majeure is not an excuse with respect to other provisions where it is not specifically mentioned.

b. Headings. The titles of the articles and sections herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

c. Construction. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part thereof.

d. Incorporation of Exhibits. The exhibits hereto are incorporated in and are intended to be a part of this Agreement; *provided, however*, that in the event of a conflict between the terms of any exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.

e. Consents and Approvals. The Parties shall act in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) where the Agreement requires the consent, approval, or similar action by a Party, such consent, approval, or other similar action shall not be unreasonably withheld, conditioned, or delayed, and (ii) wherever the Agreement gives a party a right or obligation to determine, require, specify, or take similar action with respect to a matter, such determination, requirement, specification, or similar action shall be reasonable and timely.

1.03 Exhibits. This Agreement shall include the following Exhibits, including Figure 1.01(a):

Exhibit 1.01(a)	Project Description; Interconnection Facilities.
Exhibit 1.01(b)	Eastman's Standards.
Exhibit 1.01(c)	Performance Test
Exhibit 2.01	Exceptions to Eastman's Representations and Warranties.
Exhibit 2.02	Exceptions to Seller's Representations and Warranties.
Exhibit 4.03(a)	Calculation of Steam Payment.
Exhibit 4.03(b)	Calculation of Electric Payment.
Exhibit 5.01(a)	Electric Power Characteristics.
Exhibit 5.01(b)	Steam Characteristics.
Exhibit 6.03(a)	Demineralized Make-Up Water Characteristics.
Exhibit 6.03(c)	Filtered Water Characteristics.
Exhibit 6.04	Steam Condensate Characteristics.
Exhibit 6.06	Price for Commodities and Services During Construction

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.01 Representations and Warranties of Eastman. Eastman makes the following representations and warranties to Seller, each of which is true and correct on the Effective Date:

a. Organization. Eastman is a corporation duly organized and existing in good standing under the Laws of the State of Delaware, and it is duly qualified to do business in the State of South Carolina.

b. Authority. Eastman possesses all requisite corporate power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein. Eastman has all legal power and authority to own and use its properties and to transact the business in which it engages or proposes to engage, and holds or expects to obtain all Authorizations necessary and required therefor.

c. Binding Agreement. Eastman's execution, delivery, and performance of this Agreement have been duly authorized by, and are in accordance with, its articles of incorporation and bylaws, this Agreement has been duly executed and delivered for it by the signatories so authorized; and this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with the terms hereof, *except* as such enforceability may be limited by applicable Bankruptcy Laws, or by general principles of equity (regardless of whether such enforcement is considered in equity or at law).

d. No Violation. Eastman's execution, delivery and performance of this Agreement (i) will not result in a breach or violation of, or constitute a default under, any Authorization, or any contract, lease or other agreement or instrument to which it is a party, or by which it or its properties may be bound or affected; and (ii) does not require the consent,

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(authorization, or notification of any other Person, or any other action by or with respect to any other Person (*except* for consents or authorizations already obtained, notifications already delivered, or other actions already taken, each of which shall be listed in Exhibit 2.01).

e. No Proceedings. Except as disclosed in Exhibit 2.01, no suit, action, or arbitration, or legal, administrative or other proceeding is pending or has been overtly threatened against Eastman that would affect the validity or enforceability of this Agreement or the ability of Eastman to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on the business or financial condition of Eastman.

f. Operating Plans. Eastman does not have any present plans to close the Plant or to reduce its operations at the Plant in a manner that would have the effect of materially reducing Eastman's Steam Requirements below the level of such requirements as of the Effective Date.

2.02 Representations and Warranties of Seller. Seller makes the following representations and warranties to Eastman, each of which is true and correct on the Effective Date:

a. Organization. Seller is a limited liability company duly organized and existing in good standing under the Laws of the State of Delaware, and it is duly qualified to do business in the State of South Carolina. SkyGen Energy LLC is the sole member of Seller.

b. Authority. Seller possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein. Seller has all legal power and authority to own and use its properties and to transact the business in which it engages or proposes to engage, and holds or expects to obtain all Authorizations necessary and required therefor.

c. Binding Agreement. Seller's execution, delivery, and performance of this Agreement have been duly authorized by, and are in accordance with, its Certificate of Formation and its Limited Liability Company Agreement; this Agreement has been duly executed and delivered for it by the signatories so authorized; and this Agreement constitutes Seller's legal, valid, and binding obligation, enforceable against it in accordance with the terms hereof, *except* as such enforceability may be limited by applicable Bankruptcy Laws, or by general principles of equity (regardless of whether such enforcement is considered in equity or at law).

d. No Violation. Seller's execution, delivery, and performance of this Agreement (i) will not result in a breach or violation of, or constitute a default under, any Authorization or any contract, lease, or other agreement or instrument to which it is a party, or by which it or its properties may be bound or affected; and (ii) does not require the consent, authorization, or notification of any other Person, or any other action by or with respect to any other Person (*except* for consents or authorizations already obtained, notifications already delivered, or other actions already taken, each of which shall be listed in Exhibit 2.02).

e. No Proceedings. Except as disclosed in Exhibit 2.02, no suit, action, or arbitration, or legal, administrative or other proceeding is pending or has been overtly threatened

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against Seller or SkyGen Energy LLC that would affect the validity or enforceability of this Agreement or the ability of Seller to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on the business or financial condition of Seller.

ARTICLE III **TERM AND TERMINATION**

3.01 General.

a. Initial Term. The Term shall commence on the Effective Date. This Agreement shall continue in effect until the twentieth (20th) anniversary of the first (1st) day of the month following the month in which the Initial Delivery Date occurs, unless earlier terminated in accordance with the terms hereof. The termination of this Agreement shall be without prejudice to any rights or obligations of the Parties arising under this Agreement prior to such termination.

b. Termination by Seller.

i. Seller may terminate this Agreement immediately by written notice to Eastman in the event that Seller terminates the Lease Agreement pursuant to Sections 5.04(b)(ii) or 18.03 thereof.

ii. After the initial twenty (20) year Term, Seller may terminate this Agreement concurrent with Seller's termination of the Lease Agreement by notifying Eastman of such intent in writing at least thirty-six (36) months prior to the effective date of such termination; *provided, however*, that termination following an Eastman Event of Default shall be governed by Section 10.03.

3.02 Renewal. The Term shall extend automatically following the twentieth (20th) anniversary of the first (1st) day of the month following the month in which the Initial Delivery Date occurs for a period of one (1) year on the same terms and conditions as set forth herein, and shall continue to automatically extend every subsequent year so long as the Lease Agreement remains in effect. Eastman may terminate this Agreement, which termination shall be effective as of the end of the then current Term, by notifying Seller of such intent in writing at least two hundred and seventy (270) days prior to the termination of the then current Term. If Eastman so terminates this Agreement, Seller shall have the right to (a) dismantle and remove the Project, or (b) continue to own, operate, and maintain the Project pursuant to the terms of the Lease Agreement and make sales of electric power and steam to any other purchaser, in which case Eastman shall (i) provide easements across unimproved portions of the Plant Site for any necessary electric power and Steam delivery facilities or any other purpose reasonably related to such sale, and (ii) allow Seller to continue to use any existing Easements and Eastman's Infrastructure required for operation of the Project under terms identical to those contained in Section 3.04(c) of this Agreement.

3.03 Conditions Precedent.

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a. Effective Date. This Agreement shall be legally binding from and after the Effective Date.

b. Conditions. Notwithstanding the foregoing, Seller's obligations under this Agreement are expressly subject to the fulfillment of each of the conditions listed below, in each case in form and substance satisfactory to Seller in Seller's reasonable discretion; *provided, however*, that Seller may waive any such condition or may extend the date for fulfillment of any such condition. In the event that any of such conditions are not fulfilled by the date indicated (as such date may be extended), Seller may terminate this Agreement without further obligation or liability to Eastman:

i. No later than eighteen (18) months after the Effective Date, Seller shall have received all necessary Authorizations from the applicable Governmental Authorities for the construction, ownership, operation, or maintenance of the Project, and for the sale of the output (both thermal and electric) therefrom, *excluding* any Authorization which, by its nature, is not available or required prior to the commencement of construction, ownership, operation, or maintenance of the Project). With respect to each such Authorization, Seller shall not be deemed to have received the Authorization unless either (A) all appeals or other challenges of such Authorization have been resolved to Seller's satisfaction, or (B) the time for filing appeals or other challenges to such Authorization has expired with no appeal or other challenge having been filed.

ii. No later than eighteen (18) months after the Effective Date, the Financial Closing shall have occurred.

c. Notice. Seller shall notify Eastman of the satisfaction, extension, or waiver of each of the conditions precedent listed in Paragraph (b).

3.04 Suspension by Eastman.

a. Plant Closure. Eastman shall notify Seller as soon as Eastman makes or becomes aware of any formal proposal to indefinitely or permanently close the Plant.

b. Suspension. Eastman may suspend its obligations to accept the delivery of Steam and electric power from Seller under this Agreement and its obligations set forth in Sections 6.03 through 6.06 hereto upon six (6) months prior written notice to Seller in the event of the indefinite or permanent closure of the Plant.

i. Notwithstanding the foregoing, the payment obligations for the Minimum Steam Purchase set forth in Section 4.01(h) shall not be subject to suspension. If the closure of the Plant is expected to be permanent, Eastman may satisfy its payment obligations for the Minimum Steam Purchase set forth in Section 4.01(h) by making a single, lump sum payment to Seller, *provided* that the Parties agree upon the amount of such payment.

ii. Any transfer of the Plant, whether before or after its closure, shall be subject to assignment or transfer provisions contained in Section 7.01(e).

iii. The obligations of the Parties hereunder shall be reinstated in the event that the Plant is subsequently reopened, by Eastman or others, at any time prior to the expiration of the Term; *provided, however*, that Seller's obligations to deliver to Eastman Steam in excess of the Minimum Steam Purchase or electric power shall be subject to any commitments for sales of steam or electric power entered into by Seller during any Eastman Suspension Period; and *provided, further*, that if Eastman or others have made a lump sum payment in respect of the Minimum Steam Purchase pursuant to Paragraph (b)(i), Eastman or others re-opening the Plant shall not be required to pay for Steam representing the Minimum Steam Purchase, to the extent of such payment. During any Eastman Suspension Period, Seller shall be entitled to continue to own, operate, and maintain the Project and make sales of electric power and/or steam to any other purchaser.

c. Eastman's Infrastructure:

i. During any Eastman Suspension Period, Seller shall have the option to use Eastman's Infrastructure, at its own risk and cost, but not including any capital lease or other similar charges for such use. Any period during which Seller is utilizing Eastman's Infrastructure shall be an "Infrastructure Utilization Period." Seller shall notify Eastman of the commencement and the termination of any Infrastructure Utilization Period. To the extent permitted by Law, Seller shall be entitled to operate Eastman's Infrastructure utilizing any applicable Authorization held by Eastman; *provided, however*, that at Eastman's request, the Parties shall use their best efforts to cause any such Authorizations to be transferred to Seller. At the end of any Infrastructure Utilization Period, at Eastman's request, the Parties shall use their best efforts to cause any Authorizations transferred to Seller pursuant hereto to be transferred back to Eastman. Eastman shall grant to Seller, to the extent required, adequate access and license(s) to use Eastman's Infrastructure.

ii. During any Infrastructure Utilization Period, Seller shall be responsible for operating Eastman's Infrastructure in accordance with Prudent Operating Practice. Eastman shall provide Seller with copies of any existing operation and maintenance procedures with respect to each component of Eastman's Infrastructure, and Seller shall comply with any such procedures of which it has received notice. Seller shall have the option, but shall not be required, to make any capital or other improvement to Eastman's Infrastructure in connection with its use of Eastman's Infrastructure; *provided, however*, that Seller shall obtain Eastman's written consent to any such capital or other improvement to Eastman's Infrastructure. At the end of any Infrastructure Utilization Period, Seller shall transfer any such capital or other improvement to Eastman's Infrastructure to Eastman, at no cost to Eastman, but without any warranty or other liability on the part of Seller. In the event that Seller has complied with the requirements of this Subparagraph, but any capital or other improvement or repair is required to continue to operate any component of Eastman's Infrastructure and Seller elects not to make such capital or other improvement or repair, Seller shall have the right to shut down such component, and the Infrastructure Utilization Period with respect to such component shall terminate.

iii. At the end of any Infrastructure Utilization Period, Seller shall return custody and control of Eastman's Infrastructure used during such Infrastructure Utilization Period to Eastman, in substantially the same condition that Eastman's Infrastructure would have been in if Eastman had operated and maintained the equipment during such Infrastructure Utilization Period in accordance with Prudent Operating Practice.

iv. In the event that Eastman dismantles the Plant and removes substantially all of the other components of the Plant, but Seller's use of Eastman's Infrastructure necessitates the deferral of the dismantlement and removal of any portion of Eastman's Infrastructure, Seller shall pay any Property Tax assessed against such portion of Eastman's Infrastructure during the portion of the Infrastructure Utilization Period after the dismantlement of the other components of the Plant.

v. Either Party may cause an environmental audit to be conducted as of the commencement of the Infrastructure Utilization Period; *provided, however*, that the obligations of the Parties hereunder, including their obligations under Article IX, shall not be in any way affected by the results of such audit, or by whether any such audit identifies any Hazardous Substance or other environmental condition at the site of Eastman's Infrastructure.

vi. The indemnity and liability provisions set forth in Article IX shall apply to all actions taken or not taken by Seller during the Infrastructure Utilization Period relative to Seller's utilization of Eastman's Infrastructure, and the insurance provisions set forth in Article XI shall be modified to the extent necessary to account for Seller's utilization of Eastman's Infrastructure.

3.05 Termination by Eastman: Early Installation of Package Boilers.

a. If Seller has not commenced the foundation work for the Project on or before eighteen (18) months after the Effective Date, Eastman may indicate its intent to terminate this Agreement by written notice to Seller during the thirty (30) day period immediately prior to the end of the eighteen (18) month period. If Eastman fails to provide notice to Seller of its intent to terminate this Agreement within such thirty (30) day period, Eastman shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.05(a)(i).

b. If Eastman provides such notice to Seller, Seller shall have thirty (30) days to notify Eastman that Seller will continue its development efforts. If Seller notifies Eastman that it does not intend to continue its development efforts, or if it fails to respond to Eastman within such thirty (30) day period, this Agreement shall terminate at the end of such thirty (30) day period. If, within such thirty (30) day period, Seller notifies Eastman that it does intend to continue its development efforts, Seller shall pay a fee of ten thousand dollars (\$10,000) for each month of extension beyond the end of such eighteen (18) month period, and shall include the fee for the first (1st) month of extension with the notice to Eastman that it has elected to continue its development efforts. Subsequent payments shall be due on the first (1st) day of each succeeding month of extension. Seller may extend its development efforts without commencing foundation work for the Project for no more than twelve (12) months from the date on which it notifies Eastman that it desires to continue its development efforts.

c. If Seller has not commenced foundation work for the Project on or before the last day of the twelve (12) month extension period allowed pursuant to Subparagraph (a)(ii), Eastman may terminate this Agreement by written notice to Seller during the thirty (30) day period immediately prior to the end of said extension period. Termination of this Agreement shall be effective immediately upon receipt of notice by Seller. If Eastman fails to provide notice to Seller of its election to terminate this Agreement within such thirty (30) day period,

(Eastman shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.05(a)(ii).

3.06 Change in Law.

a. If Seller has elected to continue its development efforts pursuant to Section 3.05, and, during the extension period but prior to the commencement of foundation work for the Project a change in Law occurs that requires Eastman to permanently abandon or to otherwise render incapable of operating Eastman's Existing Steam Equipment prior to the current schedule for commercial operation of the Project, Eastman may indicate its intent to terminate this Agreement by written notice to Seller during the thirty (30) day period immediately following such change in Law, which notice shall include a statement regarding the date (the "Imposed PB Completion Date") by which Eastman is required to abandon or otherwise render incapable of operation of Eastman's Existing Steam Equipment, as required by such change in Law. Eastman shall use its best efforts to obtain the maximum extension of time for the Imposed PB Completion Date. If Eastman fails to provide notice to Seller of its election to terminate this Agreement within such thirty (30) day period, Eastman shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 3.06(a).

(b. If Eastman provides such notice to Seller, Seller shall have thirty (30) days to notify Eastman whether it desires to continue development of the Project. If Seller provides such notice, Seller shall order the Package Boilers, and shall use its best efforts to complete the installation thereof, including all ancillary equipment and utility interconnections necessary to the generation and delivery of Steam to the OSBL Steam Interconnection Facilities, as soon as practical. Seller shall use its best efforts to complete such installation before the Imposed PB Completion Date, or as soon thereafter as possible. Provided that Seller continues to use its best efforts to complete the installation of the Package Boilers, Eastman shall have no right to terminate this Agreement pursuant to this Section. If Seller notifies Eastman that it does not intend to purchase the Package Boilers and use its best efforts to complete the installation thereof or if it fails to respond to Eastman within such thirty (30) day period, this Agreement shall terminate at the end of such thirty (30) day period.

ARTICLE IV
PURCHASE AND SALE OF STEAM AND ELECTRIC POWER

4.01 Purchase and Sale of Steam.

a. Start-Up and Testing. Prior to the Initial Delivery Date, Eastman will purchase Steam tendered by Seller from the Project during Project start-up and testing, up to the lesser of the Maximum Steam Demand or Eastman's Steam Requirements. The price for such Steam shall be the price set forth in Part I.A and I.B of Exhibit 4.03(a). Eastman and Seller shall develop a mutually agreeable protocol for the delivery of Steam to the Plant prior to the Initial Delivery Date.

(b. Requirements. On and after the Initial Delivery Date and for the duration of the Term, Seller shall sell to Eastman and Eastman shall purchase from Seller, Steam at the price

set forth in Part I.A and I.B of Exhibit 4.03(a), in an amount equal to the lesser of the Maximum Steam Demand or Eastman's Steam Requirements.

c. Maximum Steam Capacity; Exclusivity. Seller shall not be obligated to produce, deliver, or sell to Eastman amounts of Steam in excess of the Maximum Steam Capacity. On and after the Initial Delivery Date, and for the duration of the Term, unless specifically permitted herein, or agreed to in writing by Seller, Eastman shall only use the thermal output of the Project to meet Eastman's Steam Requirements, up to the Maximum Steam Capacity.

d. Package Boiler Steam. On and after the Initial Delivery Date and for the duration of the Term, during any period when Seller does not or cannot provide Steam in the amounts required under Paragraph (b) using the CT/HRSG portion of the Project due to Maintenance Outages, Economic Dispatch, Force Majeure, or otherwise, then, *except* (i) during periods following an Eastman Adverse Act which prevents Seller from delivering Steam, or (ii) as provided in Section 10.03(b), Seller shall sell to Eastman and Eastman shall purchase from Seller, Steam produced in the Package Boilers in an amount equal to the lesser of the Maximum Steam Demand or Eastman's Steam Requirements; *provided, however*, that, except as provided in Section 5.02(a)(iv), Seller shall not be obligated to produce, deliver, or sell to Eastman amounts of Steam in excess of the aggregate rated capacity of the Package Boilers; *and provided further*, that the delivery of Steam to Eastman from the Package Boilers shall be subject to the provisions of Section 5.02(a). Eastman shall pay for Steam purchased under this Paragraph at the price set forth in Part I.C of Exhibit 4.03(a); *provided, however*, that if Seller delivers Steam produced in the Package Boilers during any period of Maintenance Outage caused directly by a Seller Adverse Act, the price for Steam purchased under this Paragraph during such Maintenance Outage shall be the price set forth in Part I.A and I.B of Exhibit 4.03(a) rather than the price set forth in Part I.C of Exhibit 4.03(a).

e. CT Dispatch. Notwithstanding the provisions set forth in Paragraph (d), Eastman shall have the option to require Seller to continue to deliver Steam and electric power from the CT/HRSG portion of the Project during periods of Economic Dispatch in accordance with the following:

i. Seller shall provide Eastman with as much advanced notice as possible of an expected period of Economic Dispatch, but in no event less than four (4) hours (or such shorter notice as Seller may receive from the purchaser under any Power Purchase Agreement). Such notice shall include the expected duration of the period of Economic Dispatch, and the estimated incremental cost to Eastman of continuing to deliver Steam and electric power during such period (at the price set forth in Part II of Exhibit 4.03(b)). Upon receipt of Seller's notice, Eastman shall have two (2) hours (or one half of the length of such shorter notice as Seller may receive from the purchaser under any Power Purchase Agreement) to notify Seller that Eastman elects to require Seller to continue operating the CT/HRSG portion of the Project during such period.

ii. During such period, Seller shall operate the CT/HRSG portion of the Project at its optimal load point, subject to mechanical limitations and the limitations imposed by any Law or Authorization, to minimize incremental costs of operating. Eastman shall pay to

Seller an additional charge for each such period, in addition to amounts determined under Exhibit 4.03(a) and Part II of Exhibit 4.03(b), which charge shall equal the amount, if any, by which Seller's actual variable cost of operating the CT/HRSO portion of the Project, including fuel, operation, and maintenance expenses, taxes, and other variable expenses, exceeds the actual revenue received from the sale of electric power to Eastman and/or other parties and the sale of Steam to Eastman during such period.

f. Project Delivery Failure. If, for any reason, the Project does not deliver to Eastman all of Eastman's Steam Requirements, up to the Maximum Steam Demand, when and to the extent required under this Agreement, Eastman may obtain such steam from sources other than the Project during the period and to the extent that such deliveries are not made, and, if such reason results directly from a Seller Adverse Act, Seller shall reimburse Eastman for any additional costs for such Steam paid by Eastman above the price set forth in Parts I.A and I.B of Exhibit 4.03(a), *provided* that such additional costs shall not exceed the lowest cost of Steam from an alternative source available to Eastman at the time that such costs are incurred that provides reliability equivalent to that expected by the Parties from the Package Boilers pursuant to Section 5.02(a). Seller's reimbursement shall be paid within thirty (30) days after receipt of a statement from Eastman, which statement shall include sufficient supporting information to enable Seller to determine that the requirements of this Paragraph have been complied with. Seller's payment hereunder shall be Eastman's exclusive remedy for Seller's failure to deliver Steam hereunder.

g. Maximum Steam Demand. Except as provided in this Paragraph or in Section 4.01(h), the Maximum Steam Demand shall equal the Basic Steam Demand, and, except as provided in Section 4.01(h), Seller shall not be obligated to arrange firm natural gas supply and transportation to meet Eastman's Steam Requirements in excess of the Basic Steam Demand. Eastman may, at any time, request by prior written notice, or Seller's header control system may automatically provide, an amount of Excess Steam up to, but not in excess of, the Maximum Steam Capacity. Seller shall use its best efforts to supply such Excess Steam, subject to the availability of fuel and fuel transportation. Eastman shall pay for such Excess Steam at the price set forth in Part I.A and I.B of Exhibit 4.03(a). Except as specifically provided herein, Seller shall not be required to produce Steam at an instantaneous rate in excess of the Maximum Steam Demand. Under no circumstances shall Seller be required to reduce the production or sale of electric power to any purchaser under any Power Purchase Agreement to satisfy Eastman's Steam Requirements at an instantaneous rate in excess of the Maximum Steam Demand.

h. Steam Above Maximum Steam Demand. Eastman may, at its option, commit to purchase quantities of Steam above the Maximum Steam Demand from Seller. The following conditions and procedures shall apply to situations in which Eastman desires Seller to produce, sell, and deliver Steam to Eastman in excess of the Maximum Steam Demand on a committed basis:

i. Eastman has the option, by written notice, to request that Seller increase the Maximum Steam Demand to include a level of Incremental Steam Demand; *provided, however*, that the Maximum Steam Demand shall not, under any circumstances, exceed the Maximum Steam Capacity. The notice shall be delivered no later than ninety (90) days prior to the need for the increase in the Maximum Steam Demand, and shall specify the length of time

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during which the Incremental Steam Demand shall be in effect, and the beginning and ending dates thereof.

ii. Upon receipt of Eastman's notice pursuant to Subparagraph (i), Seller shall investigate the availability of a Supplemental Fuel Arrangement. Prior to entering into any Supplemental Fuel Arrangement, Seller shall provide Eastman with copies of such Supplemental Fuel Arrangement for Eastman's approval. Seller shall not enter into any Supplemental Fuel Arrangement without Eastman's prior written approval; *provided, however*, that the Maximum Steam Demand shall not include the Incremental Steam Demand until Eastman shall have approved a Supplemental Fuel Arrangement, or shall have agreed to provide such fuel to Seller pursuant to Section 5.12, in each case in amounts sufficient to satisfy such Incremental Steam Demand.

iii. In the event that Seller enters into a Supplemental Fuel Arrangement, and Eastman fails to take Steam in an amount equal to the Maximum Steam Demand, Eastman shall pay Seller any fixed fuel, transportation charges, penalties, or other costs that Seller incurs pursuant to such Supplemental Fuel Arrangement (*excluding* Seller's internal overhead costs or costs related to interruptible arrangements or short term purchases made on the spot market) that Seller is unable to mitigate through the exercise of reasonable diligence.

i. Minimum Steam Purchase. During each of the first ten (10) Contract Years, Eastman shall purchase the Minimum Steam Purchase, and if Eastman does not use the Minimum Steam Purchase, Eastman shall nevertheless pay Seller an amount equal to the amount for such Minimum Steam Purchase, less any incremental net revenue that Seller receives from selling electric energy produced by condensing that portion of the Minimum Steam Purchase that Eastman does not use in Seller's steam turbine (*excluding* costs incurred by Seller in transacting the additional electric sales). Seller shall use best efforts to maximize the production of and sale price of such power, but in no event shall such price be less than the non-firm energy price available to the Project at the nearest utility interchange.

j. Excuse From Minimum Steam Purchase. The Minimum Steam Purchase applies to each day of each month; *provided, however*, that Eastman may designate in writing up to fifteen (15) days each Contract Year as days during which the daily Minimum Steam Purchase does not have to be purchased. Eastman may accumulate unused days up to a maximum of forty-five (45) days per Contract Year, and carry these days forward indefinitely. Eastman shall notify Seller on or before the fifth (5th) day of each month whether any days during the preceding month are designated as days during which the daily Minimum Steam Purchase does not apply. The Minimum Steam Purchase shall not apply to periods when Seller is unable to deliver Steam to Eastman.

k. Package Boilers. In the event that Seller fails to deliver Steam from the Package Boilers to the extent required under Section 4.01(d) for any reason other than Maintenance Outages (*provided* that Seller has performed its obligations under Section 5.02(a)), Force Majeure, a failure on the part of Eastman to request Steam or an Eastman Adverse Act, and such failure continues for a continuous period of seventy-two (72) hours after written notice from Eastman to Seller (the "Steam Demand Notice") demanding resumption of such delivery of Steam, the following provisions shall apply:

i. Eastman may take possession of and operate the Package Boilers and all ancillary equipment and utility interconnections that are necessary to generate and deliver Steam to Eastman from the Package Boilers at Eastman's own risk and cost, but not including any capital lease or other similar charges for such use. Any period during which Eastman operates the Package Boilers shall be a "PB Utilization Period". A PB Utilization Period shall continue until the earlier of the date when (A) Seller corrects the condition or circumstance giving rise to Seller's failure to deliver Steam or otherwise demonstrates to Eastman's reasonable satisfaction that it can and will resume normal operations of the Package Boilers, at which time, Eastman shall return custody and control of the Package Boilers to Seller pursuant to Subparagraph (iv); or (B) Eastman exercises its rights pursuant to Section 10.02(e).

ii. To the extent permitted by Law, Eastman shall be entitled to operate the Package Boilers utilizing any applicable Authorization held by Seller; *provided, however*, that at Seller's request, the Parties shall use their best efforts to cause any such Authorizations to be transferred to Eastman. At the end of any PB Utilization Period, at Seller's request, the Parties shall use their best efforts to cause any Authorizations transferred to Eastman pursuant hereto to be transferred back to Seller. Seller shall grant to Eastman, to the extent required, adequate access and license(s) to use the Package Boilers.

iii. During any PB Utilization Period, Eastman shall be responsible for operating the Package Boilers in accordance with Prudent Operating Practice. Seller shall provide Eastman with copies of any existing operation and maintenance procedures with respect to the Package Boilers, and Eastman shall comply with any such procedures of which it has received notice. Eastman shall have the option, but shall not be required, to make any capital or other improvement to the Package Boilers, including installation of new gas pipelines, if any, required to lawfully deliver gas to the Package Boilers; *provided, however*, that Eastman shall obtain Seller's written consent to any such capital or other improvement to the Package Boilers. At the end of any PB Utilization Period, Eastman shall transfer any such capital or other improvement to the Package Boilers to Seller, at no cost to Seller, but without any warranty or other liability on the part of Eastman.

iv. At the end of any PB Utilization Period, Eastman shall return custody and control of the Package Boilers to Seller, in substantially the same condition that the Package Boilers would have been in if Seller had operated and maintained the equipment during such PB Utilization Period in accordance with Prudent Operating Practice.

v. In the event that Seller dismantles the Project and removes substantially all of the other components of the Project, but Eastman's use of the Package Boilers necessitates the deferral of the dismantlement and removal of same, Eastman shall pay any Property Tax assessed against the Package Boilers during the portion of the PB Utilization Period after the dismantlement of the other components of the Project.

vi. Either Party may cause an environmental audit to be conducted as of the commencement of the PB Utilization Period; *provided, however*, that the obligations of the Parties hereunder, including their obligations under Article IX, shall not be in any way affected by the results of such audit, or by whether any such audit identifies any Hazardous Substance or other environmental condition at the site of the Package Boilers.

4.02 Purchase and Sale of Electric Power.

a.

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4.03 Price.

a. Steam Payment and Steam Rebate. The Steam Payment and Steam Rebate shall be as determined in accordance with Exhibit 4.03(a).

b. [REDACTED]

4.04 Billing.

a. Meter Readings. Seller shall read its meters on the first (1st) day of each month, and shall make a record of each such reading. The amount of Steam and electric power delivered to Eastman and natural gas delivered into the HTM Heater Pipeline for consumption in the HTM Heater System during the preceding month shall be determined from such readings, as such readings are adjusted pursuant to Section 5.08.

b. Billings. Bills for amounts due hereunder shall be rendered by Seller on or before the tenth (10th) day of each month, and shall incorporate such information as may reasonably be necessary or desirable to determine the payments for electric power, natural gas, and Steam delivered during the preceding month, and other amounts due hereunder, including indemnification payments.

c. Final Billing. In the event of the termination or expiration of this Agreement, Seller shall, within five (5) days of the date of termination or expiration, or as soon thereafter as practicable, provide a final billing statement to Eastman.

d. Steam Rebate. The last bill for each quarter shall also include a statement of the Steam Rebate. Seller shall pay Eastman the Steam Rebate by means of an offset against the amount due from Eastman to Seller for such month or, if the amount due Eastman for the Steam Rebate is greater than the amount due Seller from Eastman for such month, then Seller shall pay Eastman the excess.

[REDACTED]

f. Amounts Owed Eastman. In the event that Seller owes any amount to Eastman pursuant to Section 4.01(f), Section 4.02(b)(iv), or Section 4.02(g)(iv) or (vi), Eastman shall send Seller a statement of the amount due, and Seller shall make payment thereof in accordance with the provisions of Section 4.05 in the form of the credits set forth in Exhibit 4.03(a) with respect to the Steam Payment and in Exhibit 4.03(b) with respect to the Electric Payment, in each case for the Billing Period during which such statement is received. In the event that Seller owes any

other amount to Eastman pursuant to this Agreement, Eastman shall send Seller a statement of the amount then due, and Seller shall make payment thereof in accordance with Section 4.05.

4.05 Payment and Interest.

a. Payment.

i. All payments shown to be due on a bill shall be due and payable not later than twenty (20) days after receipt (the "Due Date").

ii. If the paying Party, in good faith, disputes a portion of any bill, the paying Party shall render payment for the undisputed portion of such bill to the receiving Party on or before the Due Date along with a statement describing the reason(s) for non-payment of the disputed portion of the bill. Billing disputes shall be handled in accordance with the provisions of Section 10.06.

iii. The paying Party shall render payment by wire transfer, or such other payment method as the Parties mutually agree upon.

b. Interest.

i. If a Party fails to pay all or a portion of the undisputed amounts billed within the time stated in Paragraph (a) hereof, the Party shall owe interest on the unpaid portion of the bill, which interest shall accrue daily at the Late Payment Rate, from the Due Date until paid.

ii. If any portion of a disputed amount is ultimately determined to be due, Eastman or Seller, as the case may be, shall owe interest on such portion of such disputed amount to the extent that such portion is determined to be due and owing, which interest shall accrue daily at the Late Payment Rate, from the original Due Date of such amount until such amount is paid.

c. No Set-off. Except as provided in Sections 4.04(d) and (e), all payments made by either Party shall be free and clear of, and without any deduction for or on account of, any set-off, counterclaim, or other liability to the other Party, except to the extent required by Law.

d. Affiliate Payment. During any period when Seller is permitted to satisfy its electric power supply obligations hereunder indirectly by causing an Affiliate to supply such electric power, Seller shall have the option to arrange for such Affiliate to bill Eastman directly, and to direct Eastman to pay such Affiliate directly.

4.06 Seller's Requirements. Notwithstanding the obligation of Seller to sell electric power and Steam produced by the Project to Eastman, Seller shall, without any payment to Eastman or other penalty, have the right to use as much of the electric power or steam produced by the Project as may be reasonably required to supply station services (such as deaerator steam, auxiliary power to run station equipment, etc.) to the Project.

ARTICLE V
OPERATION AND MAINTENANCE

5.01 Electric Power and Steam Deliveries.

[REDACTED]

[REDACTED]

[REDACTED]

b. Steam Specifications. Steam delivered by Seller shall have the flow, pressure, and temperature characteristics described in Exhibit 5.01(b). Steam produced by Seller shall be delivered to Eastman at the Points of Delivery shown in Figure 1.01(a).

i. Eastman shall not be required to accept or pay for Steam that does not have the characteristics described in Exhibit 5.01(b). If Eastman accepts Steam that does not have the characteristics described in Exhibit 5.01(b), Eastman shall pay for such Steam pursuant to Section 4.03.

ii. Title to all Steam delivered to Eastman hereunder, and full responsibility therefor and risk of loss with respect thereto, shall pass to and vest in Eastman at the Points of Delivery shown in Figure 1.01(a).

5.02 Back-Up Services.

a. Back-Up Steam Services. Within thirty (30) days of Financial Closing, Seller shall commence procurement and construction of the Package Boilers. Seller shall operate and maintain the Package Boilers, including all interconnection equipment, up to the Point of Delivery designated in Exhibit 1.01(a). Seller shall maintain the Package Boilers in a state of operational readiness as set forth below.

i. Under normal operation, except during periods of Economic Dispatch, both CTs will operate at full load and provide Steam to Eastman through steam turbine extraction and/or from the HRSG. The Package Boilers will operate in a hot standby mode with steam to the steam and mud drums for quick start-up. In the event that one (1) CT/HRSG is out of service, one (1) of the Package Boilers will be started and brought up to minimum load. The

(operating HRSG may be duct fired or the Package Boiler may change load as necessary to achieve the most efficient operation. The second Package Boiler will continue to be maintained in a hot standby mode. In the event that both CTs and HRSGs are out of service, both Package Boilers will be immediately ramped up to meet Eastman's Steam Requirements.

ii. Seller shall not schedule maintenance simultaneously on both CT/HRSG trains.

iii. Seller shall not schedule maintenance simultaneously on both Package Boilers. During any period when maintenance is to be performed on a Package Boiler, Seller shall (A) arrange for a back-up Steam supply at least equal to the rated capacity of one (1) Package Boiler or (B) operate at least one (1) of the Project's CT/HRSG trains.

iv. In the event both CTs are non-operational due to a forced outage that is expected to extend more than sixty (60) days, at Eastman's request, Seller shall use its best efforts to arrange for a back-up Steam supply at least equal to the rated capacity of one (1) Package Boiler to be installed, permitted and operational as soon as reasonably possible.

b. Back-Up Electric Services. If the Project fails to deliver electric energy that Seller is obligated to provide hereunder, Seller shall arrange for a back-up electric supply to Eastman, up to the then current Contract Capacity, in accordance with Section 4.02(g).

5.03 Notice. Seller shall use best efforts to notify Eastman as soon as possible of potential or unplanned interruptions in its provision of Steam or electric services to Eastman, and coordinate back-up Steam and/or electric services with Eastman accordingly.

5.04 Operation and Maintenance.

a. Project Operation and Maintenance. Seller shall be responsible for the operation and maintenance of the machinery and equipment that comprise the Project, and all machinery and equipment otherwise owned, leased, or controlled by Seller that is necessary to meet its obligations under this Agreement, up to the various Points of Delivery specified in Exhibit 1.01(a). Seller shall operate and maintain such machinery and equipment in compliance with Prudent Operating Practice.

b. OSBL Operation and Maintenance. Eastman shall be responsible for the operation and maintenance of the machinery and equipment that comprise the Plant, the OSBL Interconnection Facilities, and the HTM Heater System, and all machinery and equipment otherwise owned, leased, or controlled by Eastman that is necessary to meet its obligations under this Agreement, up to the various Points of Delivery specified in Exhibit 1.01(a). Eastman shall operate and maintain such machinery and equipment in compliance with Prudent Operating Practice. Specific actions to be taken by Eastman shall include the following:

i. Eastman shall perform periodic inspections and routine maintenance, such as lubrication, alignment checks, and bolt tightening to permit correction of unfavorable conditions before major repair or replacement becomes necessary. All components of the OSBL

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(Interconnection Facilities and the HTM Heater System will be routinely checked in accordance with predetermined schedules, or more frequently as conditions may require.

ii. Eastman shall inform Seller of the occurrence of any event materially and adversely affecting the operation of the OSBL Interconnection Facilities or the HTM Heater System, including observance of defects in the OSBL Interconnection Facilities or the HTM Heater System, of which it becomes aware or which are reasonably ascertainable in the performance of its responsibilities under this Section. Such notice shall be given as soon as practical.

iii. Eastman shall prepare and maintain logs and records regarding the operation of the OSBL Interconnection Facilities and the HTM Heater System, and make same available to Seller at any time. Seller may use this information in filing or submitting reports or other information required by Governmental Authorities or in enforcement of vendor warranties or guaranties.

iv. Eastman shall supervise, manage, direct, and control a sufficient number of qualified Persons to operate and maintain the OSBL Interconnection Facilities and the HTM Heater System.

(v. Eastman shall supply and be responsible for the payment of all operating and maintenance expenses associated with the OSBL Interconnection Facilities and the HTM Heater System, including fuel, electric power, chemicals, materials, consumables, equipment, and parts related to the performance of the operation and maintenance responsibilities hereunder.

vi. Eastman shall not take any action that violates any manufacturer's warranty for the OSBL Interconnection Facilities, the HTM Heater System, or any component thereof, and shall take all steps reasonably necessary to keep any such warranty in full force and effect. In the event that the OSBL Interconnection Facilities, the HTM Heater System, or any component thereof is defective or fails, in whole or in part, to operate in its intended manner, and if such defect or failure may be remedied under the terms of any such warranty, Eastman shall take any steps reasonably necessary to enforce the terms of such warranty.

vii. Eastman may from time to time and in its sole discretion and at its own expense, make any additions, modifications or improvements to the OSBL Interconnection Facilities or the HTM Heater System, including installation of additional machinery, equipment, and related property which it may deem desirable. Any damage to the OSBL Interconnection Facilities or the HTM Heater System occasioned by such modification or removal must be repaired by Eastman at its own expense. Subject to its obligations under Paragraph (a), Eastman shall not be under any obligation to renew, repair, or replace any inadequate, obsolete, or worn out equipment forming a part of the OSBL Interconnection Facilities or the HTM Heater System. Seller shall have Seller's HTM Heater Interests in all such additions, repairs and replacements; *provided, however*, if Eastman, in its sole discretion, determines that any immaterial items of equipment have become inadequate, obsolete, or worn out for its purposes, Eastman may remove such items and (on behalf of Seller) sell, trade in, or otherwise dispose of them (as whole or in part) without any responsibility or accountability to Seller therefor.

c. HTM Heater Pipeline. Seller shall have the same rights and obligations with respect to the operation and maintenance of the Essential ISBL Facilities as it has with respect to the Project pursuant to Paragraph (a). Eastman shall have the same rights and obligations with respect to the operation and maintenance of the portion of the HTM Heater Pipeline outside the boundaries of the Project Site as it has with respect to the OSBL Interconnection System and the HTM Heater System pursuant to Paragraph (b).

d. Coordination of Scheduled Maintenance. Both Parties shall use their best efforts to provide the other with operating and maintenance schedules as far in advance as possible, and to coordinate outages of their respective facilities. To the extent reasonably practicable, Seller will schedule all routine maintenance of the Project to coincide with periods when (i) Eastman's operations at the Plant are shut down, or (ii) Eastman's Steam or electric power needs are reduced. To the extent reasonably practicable, Eastman shall conduct any maintenance of the Plant, the OSBL HTM Heater Facilities and OSBL Interconnection Facilities during periods when Seller is conducting scheduled maintenance of the Project.

e. Eastman Demand Schedules. Eastman shall provide Seller with non-binding Demand Schedules on an annual and monthly basis, detailing Eastman's projected Steam, natural gas, and, during any Electric Supply Period, electric power use for the immediately succeeding year or month, respectively. The Demand Schedules shall be delivered to Seller no later than fifteen (15) days prior to the end of the preceding year or month, respectively.

5.05 Work Permitting: Inspection.

a. Work Within the Cogen Site.

i. Seller will not be required to obtain and Eastman will not have the right to require work permits of any kind for work in the Cogen Site, *except* (i) where Eastman has agreed for any reason to provide emergency standby, or (ii) where the shutdown of any fire protection or deluge system within the Project Site provides the potential for the shutdown to impact Eastman's then current operations, or (iii) where a shutdown of the Plant Site fire protection system affects fire protection for the Project Site. In case of (i), (ii) or (iii) above, Seller must coordinate the work with the Eastman HSE Representative. Eastman shall use best efforts to issue any required work permit as soon as possible upon request from Seller and, provided no coordination with a third party is necessary, in any event within twenty-four (24) hours of such request. Notwithstanding the above, Eastman will, upon reasonable prior notice to Seller and during normal business hours of Seller, perform periodic inspection of and require Seller to perform periodic testing of Seller's fire protection equipment and fire water system located within the Cogen Site.

ii. Seller shall be responsible for the safety education and documentation for its Associated Parties in applicable policies and procedures for work performed in the Cogen Site. In addition, Seller will provide training systems, on a periodic basis, which will ensure that its Associated Parties are competent and skilled in the trade or craft profession they will practice and ensure they understand the training they have received. Seller shall prepare a record that contains the identity of its Associated Parties, the date of training, and the means used to verify that the Associated Parties understood the training.

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b. Work Within Easements. Work performed by Seller's Associated Parties within Easements that are located outside EKS13, if any, shall be considered work within the Project Site and shall be governed by the provisions of Paragraph (a) above; *provided, however*, that (i) any work performed by Seller's Associated Parties within Easements where the work crosses over or under, abuts, or otherwise is in close proximity to Eastman's then current operations, or where there is potential for the work to impact Eastman's then current operations shall be governed by the provisions of Paragraph (c) below; (ii) prior to any excavation in any Easement, Seller's Associated Parties shall secure an approved Eastman excavation permit from the Eastman HSE Representative, and (iii) prior to closure of any excavation in any Easement, Seller's Associated Parties shall assist Eastman in accurately recording the location of the new facilities on Eastman's drawings.

c. Work Within EKS13. With respect to any activity of Seller's Associated Parties within EKS13, such Associated Parties shall comply with Eastman's Standards and all applicable Laws and Authorizations. Without limiting the foregoing, (i) Seller's Associated Parties shall furnish pertinent information to the Eastman HSE Representative, such as Material Safety Data Sheets (MSDS), and shall obtain approval from the Eastman HSE Representative for any Hazardous Substance prior to its use at the Plant; (ii) all chemical containers brought to the Plant by Seller's Associated Parties shall comply with federal, state, and local labeling Laws and must reflect their contents in clear understandable language; (iii) any unsafe acts, conditions, or OSHA violations that occur in EKS13 with respect to Seller's Associated Parties shall be reported immediately to the Eastman HSE Representative and immediate action shall be taken to stop work and correct the unsafe situation; (iv) Seller shall coordinate all work in EKS13 with the Eastman HSE Representative and the work shall be conducted in accordance with Eastman's applicable work permitting systems; (v) Seller shall coordinate all inspection activities in EKS13 with the Eastman HSE Representative and the inspections shall be conducted in accordance with Eastman's applicable inspection systems; and (vi) Seller shall be responsible for the training of all its Associated Parties who are expected to work in EKS13 and for ensuring that they have successfully completed Eastman's contractor training.

d. Security for Work Performed Within EKS13. Following completion of Eastman's contractor training, Seller's Associated Parties whose work requires admittance to EKS13 will be required to obtain passes in accordance with the pass system maintained as part of Eastman's Standards. Seller's Associated Parties shall enter EKS13 at the 13th Street security station, or at such other entry point that is mutually agreed upon. Seller may issue its own visitor passes consistent with the visitor pass system used at the Plant Site as needed from time to time for its normal business operations; *provided, however*, that any visitor accessing EKS13 must obtain a visitor's pass from Seller, must be escorted at all times by a Seller Associated Party, and must only enter those areas of EKS13 which Seller's Associated Parties are allowed to enter pursuant to this Agreement and Eastman's Standards.

e. Availability of Eastman HSE Representative. Eastman shall ensure that the Eastman HSE Representative is available on a timely basis to perform its functions under this Section.

5.06 Metering.

a. Meters. Electric power delivered by Seller to Eastman hereunder shall be measured by electric watt-hour meters located at each Point of Delivery for electric power as described in Exhibit 5.01(a). Steam and the energy content of condensate and demineralized make-up water shall be measured in MMBtus by meters located at each Point of Delivery for Steam, condensate, and demineralized make-up water. Natural gas delivered by Seller into the HTM Heater Pipeline for consumption in the HTM Heater System hereunder shall be measured by meters located at the Gas Meter Station. Filtered water, firewater, and potable water shall be metered at the Point of Delivery thereof. Metering and recording equipment used for custody transfer of commodities shall be adequate for totalizing instantaneous flow measurements, and shall be capable of being monitored remotely and continuously in both Parties' control rooms.

b. Gains and Losses. If measurements are required to be made at any location other than those specified in this Section, adjustments shall be made by Seller to compensate for gains or losses between the point of measurement and the respective locations specified herein.

c. Installation and Reading. Seller shall (i) install, own, operate, and maintain metering stations equipment sufficient to permit an accurate determination of the quantity, quality, and time of day of delivery of electric power and Steam delivered to Eastman and natural gas delivered into the HTM Heater Pipeline for consumption in the HTM Heater System; and (ii) exercise reasonable care in the maintenance and operation of metering and pressure-regulating equipment so as to assure an accurate determination of the quantity and quality of electric power and Steam delivered to Eastman and natural gas delivered into the HTM Heater Pipeline for consumption in the HTM Heater System. Except as provided in Section 5.06(b), Seller's metering equipment shall be used for quantity and quality measurements under this Agreement. All metering equipment used to determine the billing hereunder shall be sealed, and such seals shall be broken only by an independent party, unrelated, directly or indirectly to either Party and mutually agreeable to the Parties (the "Independent Party") and only when the metering equipment is to be inspected, tested or adjusted as described in Section 5.07 or 5.08. Seller shall provide access for the Independent Party to the metering equipment at all reasonable times for the purposes of inspecting, testing and adjusting the same, *provided* that such access shall not interfere with Seller's normal business operations. In the event that Seller's metering equipment fails to register during any period of time, and except as provided in Section 5.06(d), Seller and Eastman shall estimate the amount of electric power, Steam, and/or natural gas delivered during such period based on Seller's Project instrumentation or the average amounts of electric energy, Steam and/or natural gas delivered during the immediately preceding twelve (12) months, or, in the case of failures occurring during the first twelve (12) months following the Initial Delivery Date or the Initial Electric Delivery Date, as the case may be, during the period following the Initial Delivery Date or the Initial Electric Delivery Date, as the case may be.

d. Check Meters. Eastman may own, operate, and maintain backup metering equipment at its sole expense, *provided* that such metering equipment shall be operated and maintained in a manner that does not interfere with Seller's metering equipment. Should Eastman so elect, and should any metering equipment installed by Seller fail to register during any period of time, Eastman's backup metering equipment shall be used to determine the amount of electric power, Steam and/or natural gas so delivered in lieu of Seller's estimates thereof. If Eastman installs such metering equipment, Eastman shall retain the continuing burden of demonstrating the accuracy of its metering equipment to Seller and the Independent Party.

Eastman shall provide access for Seller and the Independent Party to its metering equipment at all reasonable times for the purposes of inspecting, testing, and adjusting the same, *provided* that such access shall not interfere with Eastman's normal business operations.

5.07 Testing.

a. Annual Tests. The accuracy of any metering equipment shall be tested and verified annually by the Independent Party, at the expense of the Party responsible for maintaining such metering equipment. Such tests shall be conducted at a flow rate corresponding to the average hourly rate of flow for the period since the last preceding test.

b. Additional Tests. Upon ten (10) days' notice from the Party not responsible for maintaining such metering equipment, the Independent Party shall make additional tests. However, if the Party not responsible for maintaining such metering equipment requests a test to be made before a scheduled test, such test shall be at such Party's expense if the metering equipment proves to be accurate within one percent (1%). If errors greater than one percent (1%) are discovered, the test shall be at the expense of the Party responsible for maintaining such metering equipment.

c. Observation. The Independent Party shall notify each Party at least five (5) days prior to the test of any metering equipment. Each Party shall have the right to have a representative present at any time that any metering equipment is to be tested; *provided, however*, that a Party's failure to have a representative present at the test shall not affect the validity of the test, *provided* that the notice required under the preceding sentence has been given.

5.08 Meter Corrections. If, upon testing, any metering equipment is found to be in error by not more than one percent (1%), then previous recordings of such equipment shall be considered accurate, but such equipment shall be promptly adjusted by the Independent Party to record correctly. If, upon testing, any metering equipment shall be found to be inaccurate by more than one percent (1%), then such equipment shall be promptly adjusted by the Independent Party and retroactive billing adjustments for such errors shall be made for (i) the actual period during which inaccurate measurements were made, if that period can be reasonably determined, or (ii) if the period cannot be reasonably determined, one half of the period from the date of the last previous test of the metering equipment, but not to exceed six (6) months.

5.09 Meter Maintenance and Records.

a. Maintenance. Each Party shall have the right to have a representative present whenever the other Party or the Independent Party, as applicable, reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts any metering equipment or any equipment used in checking measurements. Each Party shall give timely notice to the other Party in advance of taking any of such actions.

b. Records. The records from the test of any metering equipment shall remain the property of the Party at whose expense the testing occurred, but, upon request, each Party shall submit to the other its records and charts (or, at its option, copies thereof) within five (5)

(days of such request, together with calculations therefrom, for inspection and copying, subject to return within ten (10) days after receipt thereof.

5.10 Start-Up Procedures.

a. Projected Initial Delivery Date. Throughout construction, start-up, and testing, Seller shall keep Eastman informed of any changes to the Projected Initial Delivery Date. Within ten (10) days after the commencement of foundation work for the Project, Seller shall provide Eastman with the construction schedule, which shall include any modification to the Projected Initial Delivery Date. Seller and Eastman shall jointly develop the construction schedule coordinating the timing of the construction of the Project, the HTM Financed Facilities, the OSBL Work, and the interconnection of such facilities.

b. Start-Up. Not less than four (4) months prior to the Projected Initial Delivery Date, Seller shall provide to Eastman a proposed schedule for the start-up and testing of the Project, which shall describe the estimated timing and duration of any tests or operations of the Project that will require cooperation or coordination by Eastman, or that may affect Eastman's operation of the Plant. Seller shall perform start-up and testing of the Project in a manner that will not unreasonably disrupt the operation of the Plant.

(c. Notice of Initial Delivery Date. As soon as practicable after completion of start-up and testing of the Project, Seller shall provide a notice of Initial Delivery Date to Eastman. The notice shall (i) specify the date on which the Initial Delivery Date will occur, and (ii) notify Eastman that Seller is prepared to commence production and delivery of Steam and natural gas from the Project to Eastman as required hereunder as of that date.

d. Delay in Start-Up. Seller shall use best efforts to cause the Initial Delivery Date to occur by June 1, 2003. In the event that the Initial Delivery Date does not occur on or before June 1, 2003, Seller shall pay to Eastman, for each day that the Initial Delivery Date is delayed beyond June 1, 2003, delay damages of two thousand dollars (\$2,000); *provided, however*, that such amount shall only be paid out of proceeds received from Seller's insurance provider for delay in start-up, *and provided further*, that the June 1, 2003 deadline shall be extended, on a day-for-day basis, during the pendency of any Eastman Adverse Act. Such delay damages shall be paid on the later of (i) the first (1st) day of the month immediately succeeding the month in which the Initial Delivery Date occurs; or (ii) five (5) business days after Seller receives such insurance proceeds. The Parties acknowledge and agree that Eastman's actual damages resulting from Seller's delay in achieving the Initial Delivery Date as provided herein would be difficult or impracticable to calculate and that, in light of the circumstances, such delay damages are not penalties, but represent a reasonable approximation of such damages, and represent Eastman's exclusive remedy for Seller's delay. Seller's failure to achieve the Initial Delivery Date by June 1, 2003, as such deadline may be extended as a direct result of Force Majeure or an Eastman Adverse Act, shall not constitute a Default or an Event of Default with respect to Seller.

(e. Notice of Initial Electric Delivery Date. As soon as practicable after the first date on which the ISBL Electric Interconnection Facilities are connected to Eastman's electric power distribution system, Seller's sale of electric power to Eastman would not result in an

(Adverse Regulatory Event or an event that would permit Seller to suspend the supply of electric power to Eastman pursuant to Section 4.02(h), and the Project is capable of commencing the regular delivery of electric power directly to Eastman in accordance with the terms of this Agreement, Seller shall provide a notice of Initial Electric Delivery Date to Eastman. The notice shall (i) specify the date on which the Initial Electric Delivery Date will occur, and (ii) notify Eastman that, subject to Section 4.02(a), Seller is prepared to commence production and delivery of electric power from the Project to Eastman as required hereunder as of that date.

5.11 Operating Committee Membership and Duties.

a. Duties. Within ninety (90) days after the Financial Closing, an Operating Committee shall be established by the Parties. The Operating Committee shall comprise an equal number of representatives designated by the Parties. The powers and duties of the Operating Committee shall consist of the following:

i. Conducting monthly update meetings upon commencement of construction of the Project. Prior to the Initial Delivery Date, each Party shall provide the other Party with monthly summaries of the status of its construction-related activities, including its ability to meet the construction milestones set forth in the current construction schedule.

ii. Reviewing the operation and maintenance plans and inspection reports for the Project, including the Package Boilers.

iii. Coordinating the delivery of Steam and electric power.

iv. Establishing procedures for testing and calibration of meters.

v. Coordinating safety and emergency procedures.

vi. Coordinating fuel deliveries.

vii. Any other mutually agreed matter affecting this Agreement.

b. Procedures. The Operating Committee shall agree upon procedures for the holding of meetings, the taking of minutes of meetings, and the appointment of sub-committees; *provided* that a quorum for any meeting of the Operating Committee shall consist of at least one (1) representative of each Party.

c. Meetings During Operation. The Operating Committee shall meet at least once every three (3) months, and additional meetings shall be scheduled as necessary.

d. Voting. Each Party shall have a single vote on the Operating Committee, and any representative of a Party may cast that Party's vote. Decisions of the Operating Committee shall require the unanimous vote of the Parties. Operating Committee disputes shall be resolved in accordance with Section 10.06.

e. Decisions. Decisions of the Operating Committee shall be binding upon the Parties; *provided, however*, that the Operating Committee shall not have the authority to vary the

(terms of this Agreement. Any variation of this Agreement shall require a formal amendment of this Agreement in accordance with Section 12.03.

5.12 Fuel.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

([REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

([REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

to supply fuel to the HTM Heater System.

[REDACTED]

ARTICLE VI
RIGHTS AND OBLIGATIONS

6.01 Certain Rights and Obligations of Seller.

a. Responsibility for the Project. Seller shall design, construct, operate, and maintain the Project, or cause the Project to be designed, constructed, operated, and maintained, in accordance with Prudent Operating Practice. Seller shall be responsible for financing the Project, and for marketing the electric power produced by the Project.

b. Financing for the HTM Financed Facilities and the OSBL Interconnection Facilities.

i. Seller shall be responsible for financing the construction of the HTM Financed Facilities and the OSBL Interconnection Facilities. In no event shall Seller be responsible for payment for the HTM Financed Facilities (inclusive of interest during construction) in excess of twenty million dollars (\$20,000,000). Other than providing financing, Seller shall not be responsible for any part of the HTM Financed Facilities.

ii. The construction of the HTM Financed Facilities shall be financed by Seller pursuant to Subparagraph (iii) below. If Eastman or Seller elects to have Eastman's preferred contractor construct the OSBL Interconnection Facilities pursuant to Section 6.02(a), such construction shall be financed by Seller pursuant to Subparagraph (iii) below. If Eastman elects to have the contractor selected by Seller to perform the construction of the Project (the "Construction Contractor") also construct the OSBL Interconnection Facilities pursuant to Section 6.02(a), Seller shall pay the Construction Contractor directly under the terms of Seller's construction contract with the Construction Contractor.

iii. As soon as possible after Financial Closing, Eastman shall deliver to Seller Eastman's certified quarterly budget (the "Eastman Work Budget") of all costs and expenses incurred to date and expected to be incurred in the future by Eastman in connection with the design, engineering, procurement, and construction of the HTM Financed Facilities (and, if applicable, the OSBL Interconnection Facilities) (the "Eastman Work Costs"). After the receipt of the Eastman Work Budget, Seller shall pay Eastman quarterly in advance for Eastman's estimated actual costs to be incurred in connection with the design, engineering, procurement and construction of the HTM Financed Facilities (and, if applicable, the OSBL Interconnection Facilities). On or before the fifteenth (15th) day prior to the beginning of each calendar quarter, Eastman shall deliver to Seller an invoice for the estimated Eastman Work Costs for such quarter less the estimated balance of funds previously advanced but not actually used through the date of such invoice. If any such invoice requests payment in excess of amounts specified for the applicable period in the Eastman Work Budget, such invoice will be accompanied by a statement setting forth in reasonable detail an explanation and substantiation of any such additional costs. Seller shall pay each such invoice on or prior to the first (1st) day of

(the calendar quarter to which the invoice applies by wire transfer to an account designed by notice from Eastman from time to time, *provided* that no such payment shall cause Seller's aggregate payments to exceed the limit set forth in Section 6.01(b)(i). On or prior to the Initial Delivery Date, the Parties shall agree on a final reconciliation of advanced Eastman Work Costs as paid by Seller under this Section 6.01(b)(iii) to actual Eastman Work Costs, and the Party to whom the reconciliation balance is owed shall deliver an invoice reflecting such balance to the other Party. Such invoice shall be paid within thirty (30) days by wire transfer to an account designated by notice from the other Party from time to time. If this Agreement is terminated pursuant to Section 3.05, Seller shall be obligated to reimburse Eastman for Eastman Work Costs actually incurred prior to the date of such termination and not previously paid to Eastman.

c. Certain Deliveries. On or prior to the dates set forth below, Seller shall deliver or make available to Eastman true and complete copies the following documents, in each case certified to the satisfaction of Eastman by the appropriate Person:

i. By the Initial Delivery Date, all Authorizations obtained by Seller related to the Project;

ii. Within six (6) months following the Initial Delivery Date, such as-built plans and drawings of and technical information relating to the Project as the Parties mutually agree are required in order for Eastman to perform its obligations under the Project Agreements; and

iii. Within six (6) months following the Initial Delivery Date, such final instruction and safety manuals for the Project as the Parties mutually agree are required in order for Eastman to perform its obligations under the Project Agreements.

d. Construction Access. Seller shall allow specified representatives of Eastman to have access to the Project, upon advance notice and during normal business hours, to observe construction of the Project, and to make inspections and obtain information required in connection with this Agreement. While at the Project, such representatives shall observe such safety precautions as may be required by Seller and shall conduct themselves in a manner that will not unreasonably interfere with the construction, ownership, operation, or maintenance of the Project.

e. Coordination of Testing. Seller shall notify Eastman at least five (5) days prior to any Performance Test. Eastman shall have the right to have a representative present at any Performance Test; *provided, however*, that Eastman's failure to have a representative present at the Performance Test shall not affect the validity of the Performance Test, *provided* that the notice required under the preceding sentence has been given.

f. Excess Steam and Electric Power. Seller shall have the right, subject to the terms of Sections 4.01 and 4.02, to produce and sell steam and/or electric power from the Project in excess of amounts to be delivered hereunder to Eastman, to any Person on such terms and conditions as Seller and such Person shall agree.

g. No Interference. Seller shall not operate, maintain, move, remove, alter, change, or interfere with the operation or maintenance of the Plant, the OSBL HTM Heater Facilities, or the OSBL Interconnection Facilities without prior written approval of Eastman.

h. Electric Interconnection. If it appears reasonably likely that the Law applicable to the sale of electric power to Eastman will be changed such that Seller's sale of electric power to Eastman hereunder would not result in an Adverse Regulatory Event or an event that would permit Seller to suspend the supply of electric power to Eastman pursuant to Section 4.02(h), Seller shall use best efforts to cause the ISBL Electric Interconnection Facilities to be completed on a schedule that will permit Seller to commence the delivery of electric power on or prior to the effective date of such change in Law, and if such completion is not possible using best efforts, Seller shall use best efforts to cause the ISBL Electric Interconnection Facilities to be completed on a schedule that will permit Seller to commence the delivery of electric power as soon after the effective date of such change of Law as possible.

6.02 Certain Rights and Obligations of Eastman.

a. Construction of OSBL Interconnection Facilities. The procedures to be followed for the design and installation of the OSBL Interconnection Facilities (the "OSBL Work") are set forth below:

i. Seller shall perform preliminary engineering for the OSBL Work of sufficient scope to prepare a bid package for distribution to third parties (the "Bid Package"). Seller shall prepare the Bid Package at its sole cost and deliver it to Eastman.

ii. Eastman shall have the right to review and comment upon the Bid Package. Eastman shall provide any comments to Seller within twenty-one (21) days after receipt of the Bid Package. Seller shall use its best efforts to incorporate or address Eastman's comments. Eastman's comments shall be limited to the integration of the OSBL Interconnection Facilities into the operating program of the Plant, health or safety matters that may have a material adverse effect on the Plant, or result in material harm to the Plant or Eastman's operations or financial condition. In any event, Seller shall ensure that the Bid Package includes all applicable Eastman's Standards. In the event Eastman has not provided written comments to Seller within twenty-one (21) days after receipt of the Bid Package, the Bid Package will be deemed to have been approved.

iii. Seller shall deliver the final Bid Package to Eastman. Eastman shall distribute the Bid Package to contractor(s) to be chosen by Eastman with the requirement that the selected contractor(s) respond to the Bid Package with a proposal that meets the requirements set forth in the Bid Package within twenty-one (21) days of the contractor's receipt of the Bid Package. Eastman shall deliver all proposal(s) received from the selected contractor(s) to Seller along with a notice of Eastman's preferred contractor within three (3) days of Eastman's receipt thereof. Seller shall have twenty-one (21) days to review the bids received by Eastman and notify Eastman whether the OSBL Work shall be performed by Eastman's preferred contractor. If Seller elects to have the OSBL Work performed by Eastman's preferred contractor, Seller shall notify Eastman of it and the provisions of Subparagraph (vi) shall apply.

iv. If Seller does not elect to have the OSBL Work performed by Eastman's preferred contractor, Seller shall bid out the OSBL Work as a separate scope item within the overall construction contract for the Project. Seller shall provide Eastman with the all-in cost of the OSBL Work included in the proposal of the Construction Contractor.

v. Within twenty-one (21) days after receipt of the cost information described in Subparagraph (iv), Eastman may elect to have the OSBL Work performed by Eastman's preferred contractor. In such case, the cost to be borne by Seller for the OSBL Work shall be limited to the amount set forth in the separated scope item, described in Subparagraph (iv), of the proposal of the Construction Contractor.

vi. Within twenty-one (21) days after receipt of the cost information described in Subparagraph (iv), Eastman may elect to have the OSBL Work performed by the Construction Contractor. If Eastman fails to notify Seller of its election, Eastman shall be deemed to have agreed to have the OSBL Work performed by the Construction Contractor. If the OSBL Work is performed by the Construction Contractor, whether pursuant to this Subparagraph or otherwise, Seller shall pay Eastman twenty-five thousand dollars (\$25,000) upon the commencement of the OSBL Work and twenty-five thousand dollars (\$25,000) upon the completion of the OSBL Work to compensate Eastman for incremental costs associated with the use of the Construction Contractor.

vii. If Seller notifies Eastman pursuant to Subparagraph (iv) that it elects, or Eastman elects pursuant to Subparagraph (v), to have the OSBL Work performed by Eastman's preferred contractor, or if Eastman elects pursuant to Subparagraph (v) to have the OSBL Work performed by the Construction Contractor, Eastman shall, at its sole cost, coordinate the work procedures and schedule for completion of the OSBL Work with the Construction Contractor. In any event Eastman shall be responsible for all costs associated with delays in the completion of the Project that result directly from delays in the completion of the OSBL Work attributable to Eastman's action or inaction or the actions or inactions of Eastman's preferred contractor.

b. HTM Financed Facilities. Eastman intends to modify its existing HTM heater system to burn certain process fuels, including the following modifications: (i) purchase and installation of three (3) new HTM heaters each rated at thirty (30) MMBtu/hour capacity, including associated piping and tankage; (ii) replacement of existing controls on six (6) existing HTM heaters (Nos. 3 to 8) with a DCS/PLC control system to be operated from an existing GSE DCS system, and modification of these heaters to burn No. 2 fuel oil rather than No. 6 fuel oil; (iii) removal of existing HTM heaters Nos. 1 and 2 and placement of one (1) of the new heaters in that location; (iv) installation of capability on two of the new HTM heaters (Nos. 10 and 11) to burn process fuel in addition to natural gas; and (v) removal and disposal of all decommissioned equipment, wiring, and piping (collectively, the "HTM Heater System Upgrades"). Eastman also intends to install the portion of the HTM Heater Pipeline outside the boundaries of the Project Site for the transportation of natural gas outside the boundaries of the Project Site from the Gas Meter Station to the HTM Heater System. Eastman shall be responsible for designing, procuring, installing, and testing the HTM Financed Facilities. Eastman shall provide Seller with opportunities to review and comment upon specifications and bid packages in accordance with the following.

i. Eastman shall provide Seller with a copy of each bid package related to the HTM Financed Facilities no later than thirty (30) days before the delivery of such bid package to potential contractors, and Seller shall provide any comments to Eastman within thirty (30) days after receipt of each bid package. In the event that Seller has not provided written comments to Eastman within thirty (30) days after receipt of any bid package, such bid package shall be deemed to have been approved by Seller.

ii. Eastman shall provide Seller with the design and drawings related to HTM Financed Facilities no later than ninety (90) days before the commencement of construction of the HTM Financed Facilities, and Seller shall provide any comments to Eastman within thirty (30) days after receipt of the design and drawings. In the event that Seller has not provided written comments to Eastman within thirty (30) days after receipt of any item, such design and drawings shall be deemed to have been approved by Seller.

iii. Notwithstanding any comment upon or approval of any bid package, design, or drawing by Seller, Seller shall in no event be responsible for or assume any liability with respect to the accuracy, completeness, or integrity of any such bid package, design, or drawing, and, as between Eastman and Seller, Eastman shall at all times remain solely and absolutely liable for the accuracy, completeness, and integrity of all such bid packages, designs, and drawings.

c. Coordination of Testing. Eastman shall notify Seller at least five (5) days prior to any performance or major system test of any portion of the OSBL HTM Heater Facilities or the OSBL Interconnection Facilities. Seller shall have the right to have a representative present at any such test, *provided, however*, that Seller's failure to have a representative present at the test shall not affect the validity of the test, *provided* that the notice required under the preceding sentence has been given.

d. Electric Interconnection. Eastman and Seller shall work together to minimize the cost of interconnection for OSBL Interconnection Facilities and ISBL Interconnection Facilities, including, to the extent allowed by Law or contract, the transfer to Seller of Eastman's right to purchase certain portions of existing interconnection facilities or equipment from the Utility. If such rights are transferred to Seller, and Seller exercises such rights, Eastman may elect to (i) require Seller to transfer the facilities or equipment back to Eastman, at no cost, upon the termination or expiration of the Lease Agreement, or (ii) require Seller to transfer the facilities or equipment back to Eastman at fair market value (determined in the same manner as Seller and Utility determined such value) at any time prior to the termination or expiration of the Lease Agreement. Seller's Electric Interconnection Facilities shall be designed and installed such that Eastman shall not be obligated to pay any wheeling, transmission, distribution, transportation, or other similar charges with respect to any electric power supplied by Seller from the Project to Eastman under this Agreement.

e. Certain Deliveries. On or prior to the dates set forth below, Eastman shall deliver or make available to Seller true and complete copies the following documents, in each case certified to the satisfaction of Seller by the appropriate party:

i. By the Initial Delivery Date, all Authorizations obtained by Eastman related to the Project or the performance of Eastman's obligations under this Agreement;

ii. Within six (6) months following the Initial Delivery Date, such as-built plans and drawings of and technical information relating to the OSBL HTM Heater Facilities and the OSBL Interconnection Facilities as the Parties mutually agree are required in order for Seller to perform its obligations under the Project Agreements; and

iii. Within six (6) months following the Initial Delivery Date, such final instruction and safety manuals for the OSBL HTM Heater Facilities and the OSBL Interconnection Facilities as the Parties mutually agree are required in order for Seller to perform its obligations under the Project Agreements.

f. Emissions Credits. If Seller requires emissions, allowances, or offsets as a permit condition pursuant to the Clean Air Act, or equivalent, in connection with the construction and/or operation of the Project pursuant to this Agreement or the performance of its obligations under this Agreement, Eastman shall provide, to the extent allowed by Law, such required allowances or offsets to Seller in accordance with the terms of this Paragraph (f) without cost to Seller. Eastman shall modify, at Seller's cost and expense, its existing air emissions Authorizations to limitations corresponding to the offset reductions attributed to the Project.

i. Seller shall give Eastman written notice of its desire to obtain such allowances or offsets within sixty (60) days following the Initial Delivery Date or receipt of Eastman's notice that Eastman has permanently abandoned, or shut down so as to be no longer capable of commercial operation, one or more of the boilers comprising Eastman's Existing Steam Equipment, whichever is later. Upon receipt of such notice, Eastman shall be obligated to provide such allowances or offsets to Seller to the extent that such allowances or offsets are available due to the curtailed operation of such boiler(s). Eastman shall not sell, transfer, or otherwise dispose of such allowances or offsets to any third party during the time set forth in this Subparagraph.

ii. If Seller does not give notice to Eastman of its desire to obtain such allowances or offsets within the time set forth above, Eastman may sell, transfer, or otherwise dispose of (or let lapse) such allowances or offsets to any third party. Notwithstanding the above, Eastman shall use its best efforts to make additional offsets available above those that may be initially identified as required by Seller for the Project, to the extent that such allowances or offsets are available due to the curtailed operation of such boiler(s).

g. Changes in Requirements. Eastman shall notify Seller promptly upon becoming aware of any expected material change in the Plant's Steam, natural gas or electric power consumption.

h. Due Diligence. Eastman shall provide reasonable assistance to Seller or its designees to perform due diligence of the Plant as required to support financing of the Project.

6.03 Water.

a. Demineralized Make-Up Water. Eastman shall deliver to Seller, and Seller shall accept from Eastman, at no cost to Seller, demineralized make-up water, having the quality characteristics set forth in Exhibit 6.03(a), in amounts equal to the Daily Condensate Shortfall. In addition, Eastman will use best efforts to provide Seller demineralized make-up water in excess of the amount required under the preceding sentence in quantities up to five hundred (500) gpm at a price equal to Eastman's actual variable incremental cost to generate such additional demineralized make-up water. The flow of demineralized make-up water from Eastman to Seller shall be controlled by Seller, and shall be metered by Eastman. If Eastman fails for any reason to deliver demineralized make-up water having the qualities set forth in Exhibit 6.03(a), Seller's Steam and electric power supply obligations shall, at Seller's option, be reduced to the extent of such failure, and, to that extent, Eastman may use steam and electric power procured from sources other than the Project, at Eastman's cost.

b. Raw Water. Eastman shall make available to Seller raw water (river water from the Congaree River) in amounts up to five thousand (5,000) gpm at no charge to Seller.

c. Filtered Water. Eastman shall make available to Seller five hundred (500) gpm of filtered river water at no charge to Seller. Eastman may make available to Seller amounts of filtered river water in excess of five hundred (500) gpm at a price equal to Eastman's actual variable incremental cost to generate such additional filtered river water. The filtered water shall have the quality characteristics set forth in Exhibit 6.03(c).

d. Potable Water. Eastman shall make available to Seller potable water at typical rates and pressures (potable water Eastman currently receives from the Upper Calhoun County Water District) in amounts up to twenty-five (25) gpm and ten thousand (10,000) gpd at no charge to Seller. If Seller requires additional amounts of potable water for the operation of the Project, Seller shall make its own arrangements with the Upper Calhoun County Water District, including installation of additional piping, and shall be responsible for all payments associated with the supply of said additional water. Seller shall not use potable water supplied by Eastman for process purposes.

e. Firewater. Eastman shall provide Seller access to Eastman's firewater system by allowing Seller to install a connection between the Plant's firewater loop and the Project's firewater loop. Seller shall comply with Eastman's Standards for testing and use of firewater. Firewater supply shall be limited to five thousand (5,000) gpm, and Seller's use of such firewater shall be limited to emergency situations that require the use of firewater or system testing.

f. Points of Delivery. All types of water provided pursuant to this Section shall be delivered to the Point of Delivery designated for such type in Exhibit 1.01(a).

6.04 Steam Condensate.

a. Steam Condensate Return. Eastman agrees to use its best efforts to return the greatest amount of process condensate to Seller consistent with Prudent Operating Practice. The condensate shall have the quality characteristics described in Exhibit 6.04. Seller shall not be required to accept any condensate from Eastman unless such condensate meets the quality

requirements set forth in Exhibit 6.04. In the event that Seller rejects any such condensate, Eastman shall be obligated to lawfully and safely dispose of the condensate. Seller will install alarms to monitor the condensate delivered by Eastman to Seller. Seller may, upon reasonable advance notice to Eastman, amend Exhibit 6.04 to include such additional quality requirements as may be necessary to comply with the standards set forth by the Project's equipment manufacturers, or as may be acceptable for Project operations.

b. Non-Conforming Steam Condensate. If the condensate fails to meet the specifications set forth in Exhibit 6.04 at the Point of Delivery, or will otherwise cause operational problems for Seller, Eastman will use its best efforts to determine and eliminate the source or cause of such failure or problem promptly.

c. Point of Delivery. Condensate provided pursuant to this Section shall be delivered to the Point of Delivery designated in Exhibit 1.01(a).

6.05 Wastewater, Sewer, and Stormwater.

a. Wastewater. Wastewater from the Project shall include cooling tower blowdown, boiler blowdown, washdowns, oily water drains (after treatment in Seller's oil-water separator), sanitary wastewater, and plant and equipment drains. Eastman shall be responsible for all costs associated with the disposal of such wastewater, including costs required to modify Eastman's existing Authorizations to cover the additional amounts of discharge.

i. Cooling tower blowdown and regenerative system wastewater from the Project in amounts up to one thousand (1,000) gpm shall be discharged through Eastman's industrial sewer system (for transport to Eastman's cooling water basin) at a mutually agreed location. The cooling tower blowdown shall not contain floating solids or visible foam except in trace amounts, shall not cause a visible sheen on the receiving waters, and shall have a pH between 6 and 9.

ii. Boiler blowdown, oily water drains (after treatment in Seller's oil-water separator), and other ancillary non-process water from the Project in amounts up to five hundred (500) gpm shall be discharged through Eastman's industrial sewer system (for transport to Eastman's internal outfall 01A) at a mutually agreed location. These wastewater streams shall not contain floating solids or visible foam except in trace amounts, shall not cause a visible sheen on the receiving waters, shall have a pH between 6 and 9, shall have an oil and grease concentration of less than five (5) milligrams per liter, shall have a total suspended solids concentration of less than twenty-five (25) milligrams per liter, and shall have a BOD₅ concentration of less than five (5) milligrams per liter. The temperature of the discharge stream shall not exceed one hundred and five degrees Fahrenheit (105 °F).

iii. Seller shall not discharge wastewater or take any other action that would cause Eastman to be unable to meet the requirements of its National Pollution Discharge Elimination System (NPDES) Authorization and other Authorizations then in effect and relating to Eastman's wastewater system. Seller's wastewater shall comply with all applicable Laws. Seller shall monitor Seller's wastewater discharge, shall notify Eastman immediately if Seller's wastewater fails to have such characteristics, and shall indemnify Eastman for violations directly

caused by Seller associated with wastewater that fails to meet the NPDES Authorization, and other Authorizations then in effect and relating to Eastman's wastewater system. Eastman reserves the right to reject any wastewater that fails to meet these characteristics.

iv. The use of any maintenance chemicals (additives) by Seller in once-through, non-contact cooling water, recirculated cooling water, and boiler blowdown must comply with the requirements set forth in the NPDES Authorization, and other Authorizations then in effect and relating to Eastman's wastewater system.

v. Under no circumstance shall Seller discharge a wastewater stream to Eastman's wastewater collection system that contains any Hazardous Substance.

vi. Sanitary sewage discharges from the Project shall be discharged to Eastman's sanitary sewage collection system at a mutually agreed location, and Eastman shall be responsible for all costs associated with the disposal of such sanitary sewage, including efforts required to modify Eastman's existing Authorizations to cover the additional amounts of discharge. Eastman shall accept and dispose of sanitary sewage up to twenty-five (25) gpm.

vii. Wastewater provided pursuant to this Section shall be delivered to the Point of Delivery designated in Exhibit 1.01(a).

b. Stormwater. Stormwater runoff from areas within the Project Site shall be directed to Eastman's wastewater collection channels to the east and south of the Project Site in accordance with a mutually agreeable site drainage plan. The amount of rainwater runoff to be directed into Eastman's drainage system shall be calculated based on a ten (10) year, twenty-four (24) hour design storm event. The stormwater runoff from the Project Site shall not contain floating solids or visible foam except in trace amounts, shall not cause a visible sheen on the receiving waters, and shall have a pH between 6 and 9.

c. No Hazardous Substances. Seller shall not introduce or cause to be introduced any material onto the Project Site or the Plant Site that is classified as a Hazardous Substance without the prior approval of Eastman. Eastman shall not withhold approval if the Hazardous Substance is allowed under Eastman's then current Authorizations.

6.06 Utilities During Construction During the construction period of the Project, at Seller's reasonable request and subject to completion of the required interconnection facilities, Eastman shall provide Seller with the electric power, water, and demineralized make-up water, and shall accept wastewater, storm water, and sanitary sewage in accordance with the terms and conditions of Sections 6.03, 6.04, and 6.05. Eastman will cooperate with Seller in coordinating such deliveries and services to enable Seller to conduct Performance Tests. Seller shall reimburse Eastman for the actual costs incurred by Eastman in providing such commodities and services during the construction period of the Project, calculated in accordance with Exhibit 6.06.

6.07 Commodity Transfer Facilities.

a. Storage. Seller shall supply, operate, and maintain, at its cost, all auxiliary equipment, including a storage tank required to provide for the storage and transfer of

condensate and demineralized make-up water between the Project and the Plant. The Points of Delivery for such commodities shall be as described in Exhibit 1.01(a).

b. Other Facilities. Except to the extent otherwise provided in Sections 6.03 or 6.04, Eastman will operate and maintain, at its cost, the piping and other equipment located on Eastman's side of the Points of Delivery and required to permit the flow of condensate and demineralized make-up water.

c. Standards. Both Seller's and Eastman's transfer facilities including the equipment specified in Section 6.07(a) shall be designed to generally accepted engineering standards, and shall be constructed in accordance with Prudent Operating Practice. Both Seller and Eastman agree to cooperate in determining the appropriate and compatible equipment specifications for the interconnection facilities.

6.08 Ownership of Property: Transfers During the Term.

a. Ownership of Project. Upon completion of the Project, Seller shall own the Project and all of the component parts thereof located on the Project Site.

b. Ownership of the OSBL Property.

i. Upon completion of the OSBL Interconnection Facilities by the Construction Contractor, Seller shall own the OSBL Interconnection Facilities; *provided, however*, that Eastman shall be responsible for the operation and maintenance of, and will bear full risk of loss with respect to, the OSBL Interconnection Facilities.

ii. Upon completion of the HTM Financed Facilities (and, if Eastman's preferred contractor constructs them, the OSBL Interconnection Facilities), Eastman shall assign to Seller for the sum of one dollar (\$1.00) Seller's HTM Heater Interests (and, if applicable, a one hundred percent (100%) interest in and to the OSBL Interconnection Facilities).

c. Liens or Encumbrances.

i. Except as provided in the Lease Agreement, neither Eastman nor Seller shall take any action that would impose, nor shall either of them suffer to exist, any liens or encumbrances, or claims of any of its respective creditors or other third parties on the property belonging to the other Party.

ii. In the event that any such liens or encumbrances or claims of any sort are placed upon any item or items of equipment in the Project, the OSBL HTM Heater Facilities, or the OSBL Interconnection Facilities as a result of Eastman action, Eastman shall immediately notify Seller in writing of such lien or encumbrance, or claim, and shall take all actions necessary to have it promptly removed. If any such lien or encumbrance is so filed or so imposed, Seller shall have the right, but not the obligation, to pay all sums necessary to obtain the release and discharge of said lien or encumbrance and Eastman shall reimburse Seller for all such costs within thirty (30) days of receipt of an invoice therefor.

iii. In the event that any lien or encumbrance or claim of any sort is placed on the Plant, the Essential ISBL Facilities, the OSBL HTM Heater Facilities, or the OSBL Interconnection Facilities (*except*, in the case of the Essential ISBL Facilities, Seller's HTM Heater Interests and the OSBL Interconnection Facilities, a lien or encumbrance held by a Lender pursuant to Section 7.02(b)) as a result of Seller action, Seller shall immediately notify Eastman of same in writing, and shall take all actions necessary to have it promptly removed. If any such lien or encumbrance is so filed or so imposed, Eastman shall have the right, but not the obligation, to pay all sums necessary to obtain the release and discharge of said lien or encumbrance and Seller shall reimburse Eastman for all such costs within thirty (30) days of receipt of an invoice therefor.

iv. Eastman and Seller shall execute such statements and other documents which are reasonably necessary or desirable to protect Seller's HTM Heater Interests and Seller's ownership interest in the Project and the OSBL Interconnection Facilities and Eastman's ownership interest in the Plant and the HTM Heater System.

d. Ownership of Certain Proprietary Property Rights. Eastman shall acquire no interest under this Agreement in any software, formulas, patterns, devices, secret inventions or processes, or copyright, patent, and other intellectual and proprietary rights, or similar items of property that are or may be used in connection with the Project, unless already in the public domain or developed jointly with Eastman's efforts. Seller shall acquire no interest under this Agreement in any software, formulas, patterns, devices, secret inventions or processes, or copyright, patent, and other intellectual and proprietary rights, or similar items of property that are or may be used in connection with the Plant, unless already in the public domain or developed jointly with Seller's efforts.

e. Retransfer of OSBL HTM Heater Facilities. Not more than one hundred fifty (150) days but not less than one hundred twenty (120) days prior to the expiration or termination of this Agreement, Eastman shall send written notice to Seller as to its choice of the options indicated below. With the issuance of timely notice and provided that Eastman is not in Default, at the expiration or termination of this Agreement, Eastman has the option to:

i. Request Seller to remove the OSBL HTM Heater Facilities at Seller's expense, and restore the HTM Heater System to its approximate condition as of the date of this Agreement;

ii. Purchase the Essential ISBL Facilities and Seller's HTM Heater Interests at the price ("Fair Market Value") that a willing buyer (who is neither a lessee in possession nor a used equipment dealer) would pay for the Essential ISBL Facilities and Seller's HTM Heater Interests in an arms length transaction to a willing seller under no compulsion to sell; *provided, however*, that in such determination:

A. The Essential ISBL Facilities and the OSBL HTM Heater Facilities shall be assumed to be in the condition in which those facilities are required to be maintained and returned under this Agreement;

B. The Essential ISBL Facilities and the OSBL HTM Heater Facilities will be valued on an installed and in-place basis, and no value shall be assigned to Seller's appurtenant rights under the Lease Agreement with respect thereto; and

C. Costs of removal of the Essential ISBL Facilities and the OSBL HTM Heater Facilities from the current location shall not be a deduction from such valuation; or

iii. Enter into a new agreement with Seller regarding Seller's ownership and Eastman's operation and maintenance of the OSBL HTM Heater Facilities.

In the event that Eastman elects the option described in Subparagraph (i) above, Seller shall have the option, in its sole discretion, of abandoning the OSBL HTM Heater Facilities in place. Such abandonment will serve to transfer title to the Essential ISBL Facilities and Seller's HTM Heater Interests and all rights and obligations incident thereto, other than any Essential Gas Facilities, to Eastman. Eastman agrees to accept title to any OSBL HTM Heater Facilities so abandoned on an AS IS basis and agrees to indemnify Seller against any and all claims, obligations or liabilities arising from the OSBL HTM Heater Facilities after such date. If the Parties are not able to agree on the Fair Market Value at least ninety (90) days before the termination of the term hereof, Seller shall appoint an independent appraiser (reasonably acceptable to Eastman) to determine the Fair Market Value, and that determination shall be final, binding, and conclusive and enforceable by either Party in a court of law. Seller and Eastman shall equally share all costs associated with any such appraisal.

6.09 Design and Construction.

a. Project Design. Eastman shall have the right to review and comment upon the process and instrumentation drawings, including interlock narratives, the single line electrical drawings, and the general arrangement drawings for the Project in accordance with this Paragraph (a). Seller shall include an Eastman comment in Seller's negotiations with the design contractors for the Project only if Seller's failure to include the comment could result in Seller's failure to design or construct the Project, or cause it to be designed or constructed, in accordance with Prudent Operating Practice and applicable Eastman's Standards relating to health, safety, or the environment. Seller shall provide Eastman with each such drawing no later than thirty (30) days before the commencement of construction of the Project, and Eastman shall provide any comments to Seller within ten (10) days after receipt thereof.

b. Certain Project Contracts. Eastman shall also have the right to review and consult with Seller as reasonably necessary regarding the principal terms of the construction contract with its general contractor and of any contract with Utility relating to electric power interconnection and back-up power prior to their execution, *provided* that Seller will be entitled to redact any commercial terms of such contracts, or may otherwise limit distribution of such contracts to the extent required under any applicable confidentiality provisions. Seller shall use best efforts to exclude Eastman from any confidentiality restrictions associated with any such contract. Eastman shall provide any comments on any such contract to Seller within ten (10) days after receipt thereof.

c. Seller Responsible. Notwithstanding any comment upon any design or drawing, review of, or consultation regarding Seller's contracts or inspection of the Project by Eastman, Eastman shall in no event be responsible for or assume any liability with respect to the accuracy, completeness, or integrity of any such design or drawing, contracts, or Authorizations or construction of the Project, and, as between Eastman and Seller, Seller shall at all times remain solely and absolutely liable for the accuracy, completeness, and integrity of all such designs and drawings, contracts, and construction of the Project.

d. Header Pressure Control. The Parties shall develop a mutually satisfactory Steam header pressure control system for Eastman's 600 psig and 160 psig headers, and, except as prevented by Eastman Adverse Act or Force Majeure, Seller shall be responsible for maintaining header pressure.

6.10 Permit Applications.

a. Seller Responsibilities. Except as provided in Section 6.10(b), Seller shall be responsible for obtaining all Authorizations necessary to construct, operate, and maintain the Project, including environmental permits, licenses, approvals, and/or other forms of Authorization. Eastman shall have the right to review and comment upon the applications for all such Authorizations. Seller shall provide Eastman with all draft applications, and Eastman shall provide any comments to Seller within fifteen (15) days after receipt of each draft application. Seller shall use best efforts to incorporate or address Eastman's comments relating to compliance of said applications with Prudent Operating Practice and integration of the Project into the operating program of the Plant. In the event that Eastman has not provided written comments to Seller within fifteen (15) days after receipt of any application, such application shall be deemed to have been approved. To the extent that any such Authorization is required to be obtained in Eastman's name, Seller shall incorporate all of Eastman's comments on said applications. Notwithstanding any comment upon or approval of any application by Eastman, Eastman shall in no event be responsible for or assume any liability with respect to the accuracy, completeness, or integrity of any application submitted by Seller, and, as between Eastman and Seller, Seller shall at all times remain solely and absolutely liable for the accuracy, completeness, and integrity of all such applications.

b. Eastman Responsibilities. Eastman shall be responsible for obtaining all Authorizations necessary to construct, operate, and maintain the HTM Financed Facilities and the OSBL Interconnection Facilities, including environmental permits, licenses, approvals, and/or other forms of authorization. Seller shall have the right to review and comment upon the applications for all such Authorizations. Eastman shall provide Seller with all draft applications, and Seller shall provide any comments to Eastman within fifteen (15) days after receipt of each application. Eastman shall use best efforts to incorporate or address Seller's comments relating to compliance of said applications with Prudent Operating Practice. To the extent that any Authorization relating to the HTM Financed Facilities or the OSBL Interconnection Facilities is required to be obtained in Seller's name, Eastman shall incorporate all of Seller's comments on said applications. Notwithstanding any comment upon or approval of any application by Seller, Seller shall in no event be responsible for or assume any liability with respect to the accuracy, completeness, or integrity of any application submitted by Eastman, and, as between Eastman

and Seller, Eastman shall at all times remain solely and absolutely liable for the accuracy, completeness, and integrity of all such applications

c. Permit Assistance. Seller recognizes that Eastman has significant in-house permitting expertise. Eastman and Seller shall cooperate in the permitting of the Project such that Eastman performs certain permitting tasks for Seller at no cost to Seller. The scope of services to be provided by Eastman include: air modeling; modifications to existing water discharge Authorizations held by Eastman to allow Eastman to fulfill its obligation under Sections 6.02, 6.03, 6.04 and 6.05; and preparation of new water discharge Authorizations required for construction of the Project.

d. Cooperation. Eastman and Seller shall work together to minimize the impacts (both environmental and cost) of all actions required under the various Authorizations applicable to the Project, including Authorizations owned by Seller and Authorizations owned by Eastman.

6.11 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EASTMAN AND SELLER SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND WHATSOEVER INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.12 Potential Expansion of the Project.

In the event that, due to the potential expansion of operations at the Plant Site, Eastman anticipates that Eastman's Steam Requirements will exceed the Maximum Steam Capacity or Eastman's Electric Requirements will exceed the Committed Capacity, Eastman shall so notify Seller in writing, specifying the amount of the increase or such need and the proposed effective date thereof. Seller and Eastman agree to negotiate in good faith for a period of one hundred twenty (120) days from the date of such notice regarding the potential expansion of the Project for the purpose of reaching agreement regarding the terms and conditions under which Seller would provide additional Steam and/or electric power. If Seller and Eastman cannot so mutually agree within such one hundred twenty (120) day period, Eastman shall be free to fulfill the additional steam and/or electric power in excess of Eastman's Steam Requirements and/or Eastman's Electric Requirements.

ARTICLE VII
SALE, TRANSFER OR ASSIGNMENT

7.01 Generally.

a. Restriction on Assignment. Except as provided in Section 7.02, this Agreement may not be assigned, in whole or in part, by either Eastman or Seller without (i) the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, and (ii) the written agreement of the assignee whereby such assignee expressly assumes and agrees to perform each and every obligation of the assignor under this Agreement, and any assignment in violation hereof shall be null and void.

b. Permitted Assignments. Notwithstanding Paragraph (a):

i. Seller may assign this Agreement, together with all the other Project Agreements then in effect, and its interest in the Project to an Affiliate or to any purchaser or transferee of all or a substantial portion of its properties without such consent, *provided* that the purchaser or transferee expressly assumes and agrees to perform each and every obligation of Seller under the Project Agreements, and any obligations related to or originating as a result of any continuing breach, Default or Event of Default under this Agreement or the Lease Agreement by Seller which commenced prior to such assignment; *and provided further*, that Seller shall continue to be liable for the purchaser's or transferee's performance hereunder until the purchaser or transferee demonstrates to Eastman's reasonable satisfaction, its financial and operational ability to perform Seller's obligations under this Agreement. Seller shall notify Eastman of its intention to make any such transfer as soon as practical. Upon request by Seller, Eastman will confirm in writing when Seller's continuing liability following such assignment shall have expired.

ii. Eastman may assign this Agreement, together with all other Project Agreements then in effect, to an Affiliate or to any purchaser or transferee of all of its interest in the Plant without such consent, *provided* that the purchaser or transferee assumes and agrees to perform all of Eastman's obligations under the Project Agreements, and any obligations related to or originating as a result of any continuing breach, Default or Event of Default under this Agreement or the Lease Agreement by Eastman which commenced prior to such assignment; *and provided further*, that Eastman shall continue to be liable for the purchaser's or transferee's performance hereunder until the purchaser or transferee demonstrates, to Seller's reasonable satisfaction, its financial and operational ability to perform Eastman's obligations under this Agreement. Eastman shall notify Seller of its intention to make any such transfer as soon as practicable. Upon request by Eastman, Seller will confirm in writing when Eastman's continuing liability following such assignment shall have expired.

c. Other Events. This Agreement shall not be deemed to have been assigned, and shall continue in full force and effect, and neither Party's interest in the Project shall be deemed to have been assigned, notwithstanding the occurrence of any of the following events:

i. Any change of the name of either Party, the ownership of either Party, or the certificate of formation, limited liability company agreement, or certificate of incorporation of any Party.

ii. Any issuance or transfer of ownership interests in either Party, or the withdrawal, redemption, or expulsion of any member of Seller.

Each Party shall notify the other Party of the occurrence of any event described in this Paragraph (c) as soon as practical.

d. Certain Transfers by Eastman. Nothing in this Agreement shall limit or restrict Eastman's right to sell, assign, lease, or otherwise transfer any property, or any interest therein, in any transaction that does not involve an assignment or partial assignment of its obligations under this Agreement, *provided* that any such transfer (individually or aggregated with other such transfers) does not materially adversely affect Eastman's ability to perform its obligations under the Project Agreements nor result in an Adverse Regulatory Event.

e. Continued Performance. In the event Eastman assigns or transfers all or any part of its interest in the Plant or Seller assigns or transfers its interest in the Project, the non-assigning Party shall continue to perform its obligations under this Agreement for the benefit of the assignee, purchaser, or transferee of the assigning Party's interest.

7.02 Finance Assignments. Seller shall have the right to collaterally assign, or grant leasehold mortgages and liens on or security interests in, the Project, Seller's HTM Interests, the OSBL Interconnection Facilities, its leasehold estate and all other rights, title and interest created under the Lease Agreement and any of its other property; and Eastman shall have the right (subject to the terms of the Lease Agreement) to collaterally assign, grant liens on and security interests in the Plant, its underlying fee simple interest in the Project Site, the rents and its interest as landlord under the Lease Agreement and any of Eastman's other property; in the case of either Party, to any Lender or any Lender's agent (each such assignee being referred to herein as a "Collateral Assignee"); *provided, however*, that (i) no such assignment shall be effective until the assigning Party shall have notified the other Party of such assignment, which notice shall include the name and address of the Collateral Assignee; (ii) any such assignment by Seller to any Lender or Lender's agent shall be expressly subject to (x) Eastman's rights with respect to PB Utilization Period under Section 4.01(k) and to the Pipeline Utilization Period under Section 5.12(a)(iii)(A), (y) the provisions of Section 3.04 of the Lease Agreement relating to the limitations on Seller's rights with respect to any of its property located in the Appurtenant Rights Areas (as defined in the Lease Agreement), and (z) the further condition, stated expressly in the Financing Documents effecting such assignment, that no Lender or Lender's agent shall be entitled to dismantle and remove the Package Boilers or any ancillary equipment and utility interconnections that are necessary to generate and deliver Steam therefrom, the HTM Heater Pipeline, the Essential ISBL Facilities, the HTM Heater System, or the OSBL Interconnection Facilities unless such Lender's or Lender's agent's right to such dismantlement and removal has arisen as a result of an event of default under the terms of the Financing Documents that has been caused directly by an Event of Default by Eastman under (and as defined in) this Agreement or the Lease Agreement; and (iii) any Collateral Assignee of Eastman executes and delivers to Seller subordination and non-disturbance agreements reasonably acceptable to Seller with respect to the Lease Agreement. So long as any assignment of which the other Party has been notified, or any consolidation, modification, or extension of any such assignment, shall remain outstanding, the following provisions shall apply:

a. Notice to Collateral Assignee. A Party shall, upon serving upon an assigning Party any notice pursuant to Section 10.02, also serve a copy of such notice upon each Collateral Assignee at the address provided for in the notice referred to above. No notice issued pursuant to Section 10.02 shall be deemed to have been duly given unless and until a copy thereof shall have been so served.

b. No Assumption. The making of an assignment pursuant to this Section shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any Collateral Assignee, as such, be deemed to be an assignee or transferee of this Agreement so as to require such Collateral Assignee, as such, to assume the performance of any of the terms or conditions on the part of Seller to be performed hereunder; but the purchaser at any sale of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this

Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be, and the Collateral Assignee in exercise of any of its remedies against Seller may elect to be, an assignee or transferee within the meaning of this Section and shall be deemed to have agreed to perform all of Seller's obligations to be performed hereunder.

c. No Transfer. Any election by any Collateral Assignee to assume this Agreement, any sale of this Agreement in any proceeding for the foreclosure of any assignment, or the assignment or transfer of this Agreement in lieu of the foreclosure of any assignment shall be deemed to be a permitted sale, transfer or assignment of this Agreement, and this Agreement shall continue in full force and effect following any such assumption, sale, transfer, or assignment. Should the Collateral Assignee elect to assume this Agreement, or in the event of a foreclosure or sale in lieu of foreclosure of this Agreement, the Collateral Assignee, the purchaser, or the transferee (as the case may be) shall also assume the Lease Agreement.

d. Casualty; Condemnation. In the event of any casualty or condemnation with respect to the Project or the Project Site, the provisions of the assignment most senior in priority shall control with respect to the use of Seller's share of any proceeds of any such casualty or condemnation; *provided, however*, that such provisions shall in all events permit the use of such proceeds for the relocation and restoration of the Package Boilers, the Essential ISBL Facilities, the portion of the HTM Heater Pipeline outside the boundaries of the Cogen Site, and all ancillary equipment and utility interconnections that are necessary to generate and deliver Steam from the Package Boilers to the Plant, as contemplated herein.

e. No Amendments. No agreement between the Parties modifying, amending, canceling, or surrendering this Agreement shall be effective without the prior written consent of all Collateral Assignees.

7.03 Right of First Offer. Except with respect to the disposition of all or any part of its interest in the Project to an Affiliate, or pursuant to a foreclosure proceeding or deed in lieu of foreclosure, Seller will not dispose of all or any part of its interest in the Project or allow a Change of Control unless it has first offered such interest (the "Transfer Interest") to Eastman in accordance with this Section.

a. Seller shall first deliver a notice to Eastman specifying the price and other commercial terms at which it is willing to dispose of the Transfer Interest (the "Transfer Offer Notice").

b. Eastman shall have the option, for a period of thirty (30) days after its receipt of the Transfer Offer Notice, to notify Seller of its intent to purchase the Transfer Interest from Seller on the terms specified in the Transfer Offer Notice.

c. The Parties shall proceed to a closing within thirty (30) days after the delivery of Eastman's notice to Seller of its intent to purchase the Transfer Interest.

d. If Eastman either notifies Seller that it does not intend to purchase the Transfer Interest or allows the thirty (30) day period to expire without having responded to the Transfer Offer Notice, Seller shall have the right for a period of one hundred eighty (180) days thereafter to dispose of the Transfer Interest to any Person, *provided* that the terms and conditions agreed

upon by such other transferee are no more favorable to such other transferee than the terms and conditions specified in the Transfer Offer Notice.

7.04 Package Boiler Purchase Option. Notwithstanding Section 7.03, upon the expiration of the Term (as may be extended pursuant to Section 3.02), Eastman shall have the option to purchase the Package Boilers, including all ancillary equipment and utility connection that are necessary to generate and deliver Steam therefrom to the Plant (*excluding* any Essential Gas Facilities or other facilities that are necessary for the operation of the Project) at a price equal to the fair market value of the Package Boilers and such associated equipment. The fair market value shall be determined by the average of two (2) independent appraisals performed by qualified appraisers. Eastman shall notify Seller in writing of its intent to exercise this option no later than ninety (90) days prior to the expiration of the Term.

7.05 Conveyances. If Seller transfers ownership of Seller's property pursuant to Section 7.03 or Section 7.04, Seller shall promptly execute, deliver, and file all assignments, bills of sale, certificates, and other conveyance documents or instruments reasonably necessary to evidence the transfer of such property, free and clear of all liens, encumbrances, and claims, other than claims arising from actions by or related to the status of Eastman. Prior to such conveyance, Seller shall, at Eastman's request, cooperate with Eastman personnel and train them to operate the Package Boilers, the Essential ISBL Facilities, and ancillary equipment and utility interconnections that are necessary to generate and deliver Steam from the Package Boilers to the Plant.

ARTICLE VIII **FORCE MAJEURE**

8.01 Effect of Force Majeure. If either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, *provided:*

a. **Notice.** The Party affected by such Force Majeure, as soon as reasonably practical after the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice, fully describing the particulars of the occurrence; and

b. **Scope.** The suspension of or reduction in the Party's performance of its obligations under this Agreement is directly attributable to the Force Majeure event, is of no greater scope than is required by the Force Majeure, and is of no longer duration than is required by the Force Majeure; and

c. **Best Efforts.** The Party affected by such Force Majeure uses its best efforts to mitigate or remedy its inability to perform as soon as possible.

8.02 Burden of Proof. The burden of proof as to whether an event of Force Majeure has occurred shall be upon the Party claiming relief due to the Force Majeure.

8.03 Payment Obligations Not Excused. Notwithstanding anything in this Article to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.

8.04 Settlement of Strikes. Notwithstanding Section 8.01(c), neither Party shall be required to settle any strike or other labor disturbance except on terms satisfactory to such Party.

8.05 Deadlines Extended. Except to the extent specifically provided herein, whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period. In the event that an event of Force Majeure occurs following the Initial Delivery Date, the Term shall be extended by an amount equal to the duration of the event of Force Majeure.

ARTICLE IX RISK OF LOSS AND INDEMNIFICATION

9.01 Risk of Loss.

a. Seller. Seller shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to the Project and any other property located inside the boundary lines of the Cogen Site; and (ii) with respect to any personal injury or death, or loss of or damage to any other property (A) arising out of the construction, ownership, operation, or maintenance of the Project or any other property inside the boundary lines of the Cogen Site, or (B) caused by electric power or Steam produced by the Project, or natural gas delivered hereunder, and occurring inside the boundary lines of the Cogen Site; *provided, however,* that Seller shall not be responsible for any loss, damage, or injury arising out of the negligence or willful misconduct of Eastman or Eastman's Associated Parties.

b. Eastman. Eastman shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to the Plant, the OSBL Interconnection Facilities, the OSBL HTM Heater Facilities, and any other property located outside the boundary lines of the Cogen Site; and (ii) with respect to any personal injury or death, or loss of or damage to any other property (A) arising out of the construction, ownership, operation, or maintenance of the Plant, the OSBL Interconnection Facilities, the OSBL HTM Heater Facilities, or any other property outside the boundary lines of the Cogen Site, or (B) caused by electric power or Steam produced by the Project, or natural gas delivered hereunder, and occurring outside the boundary lines of the Cogen Site; *provided, however,* that Eastman shall not be responsible for any loss, damage, or injury arising out of the negligence or willful misconduct of Seller or Seller's Associated Parties.

9.02 Indemnification.

a. By Seller. Seller shall protect, indemnify and hold harmless Eastman and its Associated Parties against and from any Indemnifiable Cost arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Eastman, Seller, or others (each a "Claim"), resulting from or attributable to the fault,

(negligence, or willful misconduct of Seller or its Associated Parties, or resulting from, arising out of, or in any way connected with (i) the performance of Seller's obligations under this Agreement or (ii)(A) the construction of the Project and, if the Construction Contractor constructs the OSBL Interconnection Facilities pursuant to Section 6.02(a), the construction of the OSBL Interconnection Facilities, (B) the ownership of the Project, or (C) the operation and maintenance of the Project or any other property located inside the boundaries of the Cogen Site, including the delivery of electric power, Steam, or natural gas to the boundary lines of the Cogen Site, *excepting* (y) any Indemnifiable Cost caused by the fault, negligence, or willful misconduct of Eastman or its Associated Parties or (z) any Indemnifiable Cost resulting from, arising out of, or in any way connected with the construction of the OSBL HTM Heater Facilities, or Eastman's coordination of the construction of the OSBL Interconnection Facilities, or the ownership, operation, and maintenance of the OSBL Interconnection Facilities or the OSBL HTM Heater Facilities. Seller shall protect, indemnify, and hold harmless Eastman from any claims of Seller's creditors to any right, title, or interest in the Plant.

(b. By Eastman. Eastman shall protect, indemnify, and hold harmless Seller and its Associated Parties against and from any Indemnifiable Cost arising out of any Claim resulting from or attributable to the fault, negligence, or willful misconduct of Eastman or its Associated Parties, or resulting from, arising out of, or in any way connected with (i) the performance of Eastman's obligations under this Agreement or (ii)(A) the construction of the OSBL HTM Heater Facilities and, if Eastman's contractor constructs the OSBL Interconnection Facilities pursuant to Section 6.02(a), the construction of the OSBL Interconnection Facilities, (B) the ownership of the Plant and the OSBL HTM Heater Facilities, or (C) the operation and maintenance of the Plant, the OSBL Interconnection Facilities, the OSBL HTM Heater Facilities or any other property located outside the boundaries of the Cogen Site, including the receipt of electric power, Steam, or natural gas hereunder, *excepting* (y) any Indemnifiable Cost caused by the fault, negligence, or willful misconduct of Seller or its Associated Parties or (z) any Indemnifiable Cost resulting from, arising out of or in any way connected with the construction, operation, or maintenance of the Project. Eastman shall protect, indemnify, and hold harmless Seller from any claims of Eastman's creditors to any right, title, or interest in the Project, the OSBL Interconnection Facilities and Seller's HTM Heater Interests.

c. By Eastman and Seller. Except to the extent otherwise provided in Section 9.02(d), if, due to the joint, concurring, comparative or contributory fault, negligence, or willful misconduct of the Parties, their respective Associated Parties, either Party incurs any Indemnifiable Cost arising out of any Claim, such Indemnifiable Cost shall be allocated between Seller and Eastman in proportion to their and their Associated Parties' respective degrees of fault, negligence or willful misconduct contributing to such Claim.

d. Employees and Subcontractors.

i. Neither Party nor any of its Associated Parties shall be deemed an employee of the other Party.

ii. Neither Party shall bring any claim against the other Party or its Associated Parties with respect to any liability for compensation paid to any employee of such

(Party under any applicable state or federal Worker's Compensation Act, including Worker's Compensation and/or employer's liability claims of employees.

iii. Each Party shall be responsible for all claims of the Party's own employees arising out of any provision of any Workers' Compensation Law excluding claims arising out of the willful misconduct of the other Party.

e. Notice and Participation.

i. If any Party entitled to indemnification hereunder (the "Indemnified Party") intends to seek indemnification under this Article from any other Party (the "Indemnifying Party") with respect to any Claim, the Indemnified Party shall give the Indemnifying Party notice of such Claim upon the receipt of actual knowledge or information by the Indemnified Party of any possible Claim or of the commencement of such Claim, which notice shall in no event be later than the lesser of (A) fifteen (15) days prior to the last day for responding to such Claim or (B) one-half of the period allowed for responding to such Claim. The Indemnifying Party shall have no liability under this Article for any Claim for which such notice is not provided, to the extent that the failure to give such notice prejudices the Indemnifying Party.

(ii. The Indemnifying Party shall have the right to assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; *provided, however*, that if the defendants in any such proceeding include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Claim on behalf of such Indemnified Party and the Indemnifying Party will pay the reasonable attorney's fees incurred by such separate counsel until such time as the need for separate counsel expires.

iii. Should any Indemnified Party be entitled to indemnification under this Section as a result of a Claim by a third party, and should the Indemnifying Party fail to assume the defense of such Claim within a reasonable time after receiving notice of the Claim, the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party, settle) such Claim.

iv. Except to the extent expressly provided herein, no Indemnified Party shall settle any Claim with respect to which it has sought or is entitled to seek indemnification pursuant to this Section unless (A) it has obtained the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed, or (B) the Indemnifying Party has failed to provide security, in a form reasonably satisfactory to the Indemnified Party, securing the payment of any Indemnifiable Cost, up to the amount of the proposed settlement.

v. Except to the extent expressly provided herein, no Indemnifying Party shall settle any Claim with respect to which it may be liable to provide indemnification pursuant to this Section without the prior written consent of the Indemnified Party, which consent shall

(not be unreasonably withheld or delayed; *provided, however*, that if the Indemnifying Party has reached a *bona fide* settlement agreement with the plaintiff(s) in any such proceeding, which settlement includes a full release of the Indemnified Party for any and all liability with respect to such Claim, and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement, plus the Indemnified Party's legal fees and other costs related to the defense of the Claim prior to the date of such settlement agreement, shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party with respect to the Claim, or portion thereof, that is the subject of such settlement agreement.

f. Net Amount. In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual out-of-pocket loss, net of any insurance or other recovery actually received by the Indemnified Party specifically attributable to the indemnified Claim.

g. Assertion of Claims. No Claim of any kind shall be asserted against either Party or its Associated Parties, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, unless it is filed in a court of competent jurisdiction, or a demand for arbitration is made, within the applicable statute of limitations period for such Claim.

(h. Survival of Obligation. The duty to indemnify under this Article shall continue in full force and effect notwithstanding the expiration or termination of this Agreement, with respect to any Indemnifiable Cost based on facts or conditions that occurred prior to such termination.

9.03 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY OR SUCH PARTY'S ASSOCIATED PARTIES SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGE, COST, EXPENSE OR OTHER LIABILITY, INCLUDING LOSS OF REVENUE OR PROFITS, WHETHER ARISING OUT OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER CAUSE OF OR FORM OF ACTION WHATSOEVER. THE FOREGOING LIMIT ON LIABILITY SHALL NOT APPLY TO EITHER PARTY'S OBLIGATION TO INDEMNIFY THE OTHER PARTY FOR PERSONAL INJURY, BODILY INJURY (INCLUDING DEATH), OR PROPERTY DAMAGE TO NON-AFFILIATED THIRD PARTIES TO THE EXTENT THAT SUCH OBLIGATION INCLUDES PAYMENT OF DAMAGES WHICH MAY BE INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

10.01 Events of Default by Eastman. Eastman shall be in default under this Agreement upon the happening or occurrence of any of the events or conditions described in Paragraphs (a) through (d), each of which shall be an "Event of Default" for purposes of this Agreement:

a. General Breach. Eastman breaches or fails to observe or perform any of Eastman's material obligations under this Agreement, unless within thirty (30) days after written notice from Seller specifying the nature of such breach or failure, Eastman either cures such breach or failure or, if such cure cannot be completed within thirty (30) days, commences such cure within thirty (30) days, thereafter diligently pursues such cure, and completes such cure within one hundred and eighty (180) days.

b. Existence. Eastman is dissolved, Eastman's existence is terminated, or Eastman's business is discontinued, unless (i) this Agreement is assigned to a successor pursuant to Article VII, or (ii) Eastman is merged into a successor entity or is converted into a successor entity that continues substantially all of Eastman's business activities, including its activities at the Plant.

c. Payment. Eastman fails to pay, when due, any amount due hereunder, and such failure continues for a period of forty-five (45) days following the receipt by the office of the Vice President and General Manager, Carolina Operations, with a copy to the addresses identified in Section 12.02, of a notice of such failure.

d. Misrepresentation. Any representation or warranty furnished by Eastman in connection with this Agreement was false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after Seller has given notice thereof to Eastman; *provided, however,* that if the fact, circumstance or condition that is the subject of such representation or warranty cannot be corrected within such thirty (30) day period and if Eastman within such period of thirty (30) days commences, and thereafter proceeds with all due diligence, to correct the fact, circumstance or condition that is the subject of such representation or warranty, such period shall be extended for such further period as shall be necessary for Eastman to correct the same with all due diligence or one hundred eighty (180) days, whichever is less, and (ii) such cure removes any adverse effect on Seller of such fact, circumstance, or condition being otherwise than as first represented, or (iii) such fact, circumstance, or condition being otherwise than as first represented does not materially adversely affect Seller.

10.02 Events of Default By Seller. Seller shall be in default under this Agreement upon the happening or occurrence of any of the events or conditions described in Paragraphs (a) through (d), each of which shall be an "Event of Default" for purposes of this Agreement:

a. General Breach. Seller breaches or fails to observe or perform any of Seller's material obligations under this Agreement, unless within thirty (30) days after written notice from Eastman specifying the nature of such breach or failure, Seller either cures such breach or failure or, if such cure cannot be completed within thirty (30) days, commences such cure within thirty (30) days, thereafter diligently pursues such cure, and completes such cure within one hundred and eighty (180) days; *provided that,* without limiting Seller's obligation to diligently pursue a cure, such period shall be extended to eighteen (18) months, for a cure which necessitates the replacement of, the steam turbine, one or both CTs, one or both HRSGs, one or

both Package Boilers, the Project's distributed control system, or any of the electrical transformers located in the Project's switchyard, with respect to breaches of provisions of this Agreement that cannot be performed, consistent with Prudent Operating Practices, without the equipment requiring replacement.

b. Abandonment. Seller Abandons the Project after the Initial Delivery Date.

c. Existence. Seller is dissolved, Seller's existence is terminated, or Seller's business is discontinued, unless this Agreement is assigned to a successor pursuant to Article VII, or unless a majority of the owners of Seller elect to continue the business of Seller under a successor company, and such company notifies Eastman of its intention to assume Seller's obligations under this Agreement within thirty (30) days of such dissolution, termination, or discontinuation.

d. Misrepresentation. Any representation or warranty furnished by Seller in connection with this Agreement was false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after Eastman has given notice thereof to Seller; *provided, however*, that if the fact, circumstance, or condition that is the subject of such representation or warranty cannot be corrected within such thirty (30) day period and if Seller within such period of thirty (30) days commences, and thereafter proceeds with all due diligence, to correct the fact, circumstance, or condition that is the subject of such representation, or warranty, such period shall be extended for such further period as shall be necessary for Seller to correct the same with all due diligence or one hundred eighty (180) days whichever is less, and (ii) such cure removes any adverse effect on Eastman of such fact, circumstance, or condition being otherwise than as first represented, or (iii) such fact, circumstance, or condition being otherwise than as first represented does not materially adversely affect Eastman.

e. Package Boiler Steam Delivery. If, prior to the three hundred and sixty-fifth (365th) day after Eastman has delivered a Steam Demand Notice to Seller, Seller has failed, subject to any of the enumerated exceptions listed in Section 4.01(k), to resume operational control and responsibility for the Package Boilers and resumed delivery of Steam in accordance with the provisions of this Agreement, such failure by Seller shall be deemed an Event of Default effective on the three hundred and sixty-sixth (366th) day following delivery of the Steam Demand Notice; *provided, however*, that this Paragraph shall only become effective and binding upon the Parties on the date that Eastman certifies in writing to Seller that Eastman's Existing Steam Equipment has been permanently abandoned and is no longer capable of commercial operation.

f. Natural Gas Delivery. If, prior to the three hundred and sixty-fifth (365th) day after Eastman has delivered a Gas Demand Notice to Seller, Seller has failed, subject to any of the enumerated exceptions listed in Section 5.12(a)(iii), to resume operational control and responsibility for the HTM Heater Pipeline and resume delivery of natural gas in accordance with the terms of this Agreement, such failure by Seller shall be deemed an Event of Default effective on the three hundred and sixty-sixth (366th) day following delivery of the Gas Demand Notice.